

1694

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505
5

6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 FRIDAY, JANUARY 28, 2000
17 (VOLUME 13, PAGES 1564-1795)
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23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
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1695

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EXAMINATION OF PLAINTIFFS' WITNESSES

WITNESS NAME	PAGE
PRIOR TRIAL TESTIMONY READ.....	1710
TROY WHITTEKER.....	1739
DIRECT EXAMINATION.....	1740

COURT EXHIBITS

EXHIBIT	PAGE
COURT EXHIBIT 2	
MARKED FOR IDENTIFICATION.....	1698

PLAINTIFFS' EXHIBITS

EXHIBIT	PAGE
PLAINTIFFS' EXHIBIT 1851	
MARKED FOR IDENTIFICATION.....	1708
PLAINTIFFS' EXHIBITS 25, 111, 295, 299, 301, 302, 303, 306, 307, 309, 310, 311, 312, 314, 317, 322, 324, 335, 357, 368, 402, 436.01-436.21, 438, 449, 727, 1212, 1215, 1226, 1244, 1252, 1285, 1298, 1299, 1355, 1357- 1363, 1414, 1514 & 1557	
RECEIVED IN EVIDENCE.....	1714
PLAINTIFFS' EXHIBIT 277	
RECEIVED IN EVIDENCE.....	1719
PLAINTIFFS' EXHIBIT 116	
RECEIVED IN EVIDENCE.....	1719
PLAINTIFFS' EXHIBIT 146	
RECEIVED IN EVIDENCE.....	1720
PLAINTIFFS' EXHIBIT 199	
RECEIVED IN EVIDENCE.....	1720
PLAINTIFFS EXHIBIT 365	
RECEIVED IN EVIDENCE.....	1720
PLAINTIFFS' EXHIBIT 371	
RECEIVED IN EVIDENCE.....	1720
PLAINTIFFS' EXHIBIT 543	
RECEIVED IN EVIDENCE.....	1721
PLAINTIFFS' EXHIBIT 1001	
RECEIVED IN EVIDENCE.....	1721
PLAINTIFFS' EXHIBIT 1025	
RECEIVED IN EVIDENCE.....	1721
PLAINTIFFS' EXHIBIT 1096	
RECEIVED IN EVIDENCE.....	1721
PLAINTIFFS' EXHIBIT 1496	
RECEIVED IN EVIDENCE.....	1722
PLAINTIFFS' EXHIBIT 365	
WITHDRAWN FROM EVIDENCE.....	1726
PLAINTIFFS' EXHIBIT 134	
RECEIVED IN EVIDENCE.....	1726
PLAINTIFFS' EXHIBITS 1852-A-E	
MARKED FOR IDENTIFICATION.....	1754

28 PLAINTIFFS' EXHIBIT 1853
MARKED FOR IDENTIFICATION..... 1755

1697

1 EXHIBIT PAGE
2
3 PLAINTIFFS' EXHIBITS 1852-A-E
4 RECEIVED IN EVIDENCE..... 1762
5 PLAINTIFFS' EXHIBIT 1854 & 1855
6 MARKED FOR IDENTIFICATION..... 1790
7
8
9
10
11
12
13
14
15
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1698

1 FRIDAY, JANUARY 28, 2000 8:45 A.M.
2 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
3 COURTROOM, OUTSIDE THE PRESENCE OF THE JURY)
4 THE COURT: ALL RIGHT. WE ARE ON THE RECORD
5 OUTSIDE OF THE PRESENCE OF THE JURY FOR PURPOSES OF MAKING A
6 RECORD, AS I UNDERSTAND IT, ON SOME PRIOR RULINGS, AND ALSO
7 COUNSEL SEEKING SOME FURTHER RULINGS.
8 MR. BROWN: YES, YOUR HONOR.
9 WE'LL START WITH THE DOCUMENTS WHICH HAVE BEEN
10 SORT OF AGREED TO BE ADMITTED.
11 THERE'S AN OBJECTION THEY WISH TO RESERVE. WE
12 DISCUSSED ALL THAT BEFORE.
13 AND MS. MASON HAS PREPARED THE DOCUMENT YOUR
14 HONOR REQUESTED, WHICH WE CAN HAND UP TO YOU. IT LISTS THE
15 DOCUMENTS WHICH WE ARE MOVING -- WE'LL MOVE TO ADMIT WHEN
16 THE JURY IS HERE, WITH THEIR -- IT FALLS WITHIN OUR CODE
17 PHRASE "HEARSAY OBJECTIONS AS WE HAVE DISCUSSED," SOMETHING
18 TO THAT EFFECT.
19 MR. HARDY: PREVIOUSLY DISCUSSED, YES.
20 THE COURT: GOOD. THIS IS THE DOCUMENT WE SAID
21 ON THE RECORD YESTERDAY WE WERE GOING TO MAKE A COURT
22 EXHIBIT TODAY.
23 MR. BROWN: THAT WOULD BE FINE.
24 THE COURT: WHY DON'T WE CALL THIS COURT EXHIBIT
25 2.
26 THE CLERK: COURT EXHIBIT 2.
27 (DOCUMENT MORE PARTICULARLY
28 LISTED IN THE INDEX PREMARKED

1699

1 FOR IDENTIFICATION COURT
2 EXHIBIT # 2)
3 THE COURT: IF I UNDERSTAND WHAT ARE SAYING --
4 TELL ME IF I HAVE THIS RIGHT -- THESE ARE DOCUMENTS TO WHICH
5 THE ONLY OBJECTION IS THAT THEY ARE HEARSAY, BECAUSE THERE
6 IS NO CONSPIRACY, BASICALLY; IS THAT CORRECT?
7 MS. MASON: YES, YOUR HONOR. THESE ARE
8 DOCUMENTS OF PARTIES NOT TO THIS LITIGATION THAT ARE HEARSAY
9 AND DO NOT FALL WITHIN THE COCONSPIRATOR EXCEPTION OF THE
10 HEARSAY RULE BECAUSE PLAINTIFF -- TWO REASONS; PLAINTIFF HAS
11 YET TO SHOW PRIMA FACIE EVIDENCE OF A CONSPIRACY. AND
12 SECONDLY, WE THINK THAT SHE CAN'T EVEN MAKE THAT SHOWING.
13 THE COURT: AND THESE DOCUMENTS ARE INTERNAL
14 DOCUMENTS OF THE TOBACCO INSTITUTE AND HILL & KNOWLTON?
15 MR. BROWN: HILL & KNOWLTON.
16 THE COURT: ANYTHING ELSE?
17 MR. BROWN: TI -- TWO VERSIONS OF TI AND
18 INTERNAL NEWSLETTERS.
19 THE COURT: SO WHAT THEY ARE, WITH RESPECT TO
20 HILL & KNOWLTON, THEY ARE EITHER INTERNAL MEMORANDA OR
21 COMMUNICATIONS OR PRESS RELEASES OR PUBLIC RELEASES BY HILL
22 & KNOWLTON.
23 AND THEN WITH RESPECT TO THE TOBACCO INSTITUTE,
24 THEY ARE INTERNAL TOBACCO INSTITUTE DOCUMENTS.
25 MR. BROWN: THAT'S CORRECT.
26 MS. MASON: YES, YOUR HONOR.
27 THE COURT: ALL RIGHT. AND I'LL OVERRULE THE
28 HEARSAY OBJECTION.

1700

1 BUT IN FRONT OF THE JURY, YOU NEED TO SAY THAT
2 "WE MAKE THE HEARSAY OBJECTION THAT WE PREVIOUSLY
3 DISCUSSED," AND THAT WILL TRIGGER MY COMMENT TO THE JURY
4 THAT WE STIPULATED TO ON THE RECORD YESTERDAY.
5 MS. MASON: YES, YOUR HONOR.
6 MR. BROWN: I'D LIKE --
7 MS. MASON: I WOULD JUST ADD -- I THINK THIS IS
8 ON THE RECORD -- THIS IS SUBJECT TO A MOTION TO STRIKE THAT
9 I DO NOT NEED TO STATE EACH TIME A DOCUMENT IS ADMITTED THAT
10 IS SUBJECT TO THE STIPULATION.
11 THE COURT: THAT'S CORRECT. EVERY TIME YOU MAKE
12 AN OBJECTION IN FRONT OF THE JURY THAT SAYS "WE MAKE THE
13 HEARSAY OBJECTION PREVIOUSLY DISCUSSED WITH THE COURT," IT
14 WILL BE UNDERSTOOD THAT YOU ARE PRESERVING A MOTION TO
15 STRIKE WITHOUT THE NEED TO REPEAT IT.
16 MS. MASON: THANK YOU.
17 MR. BROWN: YOUR HONOR, ONE OTHER ITEM.
18 YESTERDAY, WE HAD A LETTER WHICH LAID OUT THE
19 EXHIBITS WHICH WE BELIEVE ARE INVOLVED IN THE STIPULATION.
20 BUT THIS MORNING, WE LEARNED THAT 12 OF THEM ARE
21 WITHDRAWN FROM THE STIPULATION. THE DOCUMENTS YOU ARE
22 GETTING ARE ALL ACCURATE.
23 SO WE WOULD LIKE TO MOVE AS EARLY NEXT WEEK AS WE
24 CAN FOR THE ADMISSION OF THESE AND OTHER TI DOCUMENTS.
25 MS. CHABER: THEORETICALLY, WE CAN ADD THAT TO
26 THE LIST WE ARE DOING THIS MORNING, ASSUMING WE ARE GETTING
27 ALONG.

28 THE COURT: LET'S DO IT NOW, UNLESS THERE'S

1701

1 SOMETHING ELSE YOU WANT TO DO FIRST.
2 MS. CHABER: ABSOLUTELY.
3 THE COURT: THAT'S WHAT I'M HERE FOR, TO RESOLVE
4 MATTERS TODAY, AND WE HAVE AN HOUR TO DO IT OR MORE.

5 MS. CHABER: CAN WE PUT THEM TO THE END OF THE
6 AGENDA?
7 THE COURT: YOU CAN DO ANYTHING YOU WANT. THE
8 BOTTOM LINE, I WANT THE RECORD TO REFLECT THAT I'M HERE AND
9 AVAILABLE TO RULE ON ANYTHING ANYBODY WANTS ME TO RULE ON
10 UNTIL 10:00 O'CLOCK, WHEN THE JURY ARRIVES.
11 WE STARTED HERE AT QUARTER TO 9:00.
12 MS. CHABER: WE HAVE OTHERS HERE. SO WE CAN
13 MOVE THAT ONE TO THE END.
14 THE COURT: YOUR CHOICE.
15 MR. BROWN: I WILL GO GET THOSE DOCUMENTS SO WE
16 KNOW WHAT WE ARE TALKING AND WE'LL BE BACK.
17 THE COURT: IS THERE ANYTHING THAT I CAN DECIDE
18 NOW?
19 MS. CHABER: YES.
20 THE COURT: OKAY.
21 MS. CHABER: OKAY. I GUESS WE'VE -- OH, I GUESS
22 WE HAVE THE DEPOSITION OF IAN UYDESS. IT'S SPELLED WRONG, I
23 SEE, ON OUR DESIGNATION, BUT IT'S I-A-N. THE LAST NAME IS
24 UYDESS, U-Y-D-E-S-S.
25 AND IT'S ACTUALLY NOT A DEPOSITION. IT'S
26 ACTUALLY TRIAL TESTIMONY FROM THE ENGLE CASE, E-N-G-L-E,
27 NOVEMBER 24TH, 1998, VOLUME 146. AND NOVEMBER, I BELIEVE
28 THE SUBSEQUENT DAY, VOLUME 147, NOVEMBER 24TH, 1998, THE
1702
1 SAME DAY, SECOND VOLUME, VOLUME 147.
2 THE COURT: OKAY.
3 MS. CHABER: AND I BELIEVE THAT WE WORKED OUT
4 VIRTUALLY EVERYTHING BUT ABOUT FIVE THINGS THAT THE COURT
5 NEEDS TO ADDRESS. AND THEY ARE MR. BARRON'S OBJECTIONS.
6 THE COURT: DO YOU WANT TO GIVE ME THE
7 TRANSCRIPT OR THE PAGES I NEED, PLEASE.
8 MS. CHABER: YES. I GUESS WE'LL MARK ONE AFTER
9 YOU'VE MADE THE RULINGS. WE'LL MARK A COPY, SO IT WILL BE
10 ACCURATE, OF WHAT WE ARE GOING TO READ.
11 THE COURT: WHY DON'T YOU JUST DO THIS. WHEN
12 YOU MARK THIS FOR IDENTIFICATION PURPOSES, WHEN YOU READ,
13 YOU INCLUDE THE PAGES THAT I RULE ON, AND THEN THEY WILL BE
14 PART OF THE RECORD. EVEN THOUGH YOU DON'T READ FROM THEM,
15 THEY WILL BE INCLUDED AS PART OF THE TRANSCRIPT THAT YOU
16 MARK FOR IDENTIFICATION; RIGHT?
17 MS. CHABER: YES.
18 THE COURT: SO THE RECORD WILL BE COMPLETE THAT
19 WAY.
20 MS. CHABER: SURE. YOU'RE ASSUMING THAT YOU ARE
21 GRANTING ALL OF THEIR OBJECTIONS. WE'LL MAKE IT PART OF THE
22 RECORD ANYWAY.
23 THE COURT: NO, I'M NOT ASSUMING ANYTHING. I
24 SEE YOUR POINT.
25 MS. CHABER: MY POINT IS, LET'S RULE ON THEM AND
26 THEN WE'LL SEE IF THEY ARE THERE. THEN THE TRANSCRIPT GETS
27 MARKED, AND IF THEY'RE NOT, WE'LL PUT IT IN. AND WE'LL NOTE
28 THE PAGES THAT THE COURT HAS SUSTAINED THE OBJECTIONS TO.
1703
1 THE COURT: THAT'S PERFECT.
2 MS. CHABER: OKAY.
3 THE COURT: BETTER THAN OKAY.
4 WHAT PAGE?
5 MS. CHABER: MR. BARRON, THEY ARE YOUR
6 OBJECTIONS.
7 MR. BARRON: GOOD MORNING, YOUR HONOR.
8 THE COURT: GOOD MORNING. LET ME ASK YOU THIS
9 QUESTION: ISN'T IT BETTER TO GO OFF THE RECORD AND TAKE

10 THESE MATTERS UP, AND THEN WE CAN PUT ON THE RECORD IN A
11 MINUTE OR TWO WHAT THE POSITIONS AND THE RULINGS ARE?
12 MS. CHABER: I DON'T THINK THEY'RE GOING TO TAKE
13 THAT LONG ANYWAY. WHY DO IT TWICE?
14 THE COURT: WE'LL STAY ON THE RECORD.
15 WHAT PAGE AND LINE?
16 MR. BARRON: YOUR HONOR, IF YOU COULD TURN TO
17 THE SECOND VOLUME OF THE TWO, THAT IS NO. 147. AND IT WOULD
18 BE ON PAGE 8.
19 THE COURT: PAGE 8, WHAT LINE?
20 MR. BARRON: STARTING ON LINE 19.
21 THE COURT: RIGHT.
22 MR. BARRON: CONTINUING TO PAGE 9, LINE 20.
23 THE COURT: LET'S JUST TAKE A MINUTE SO I CAN
24 READ IT BEFORE WE ARGUE.
25 MS. CHABER: WELL, OF COURSE, YOU HAVE TO READ A
26 LITTLE BIT IN ADVANCE OF THAT, YOUR HONOR, BECAUSE THAT'S
27 THE MIDDLE OF AN ANSWER THAT HE'S BEGINNING AT. SO --
28 THE COURT: CAN I JUST SAY SOMETHING TO YOU

1704

1 ALL. I THINK IT'S EASIER IF WE GO OFF THE RECORD WHEN WE
2 HAVE THIS KIND OF BACK-AND-FORTH CONVERSATION BECAUSE I
3 THINK --
4 MS. CHABER: THAT'S FINE.
5 MR. BARRON: IT'S ACCEPTABLE TO ME, YOUR HONOR.
6 THE COURT: LET'S GO OFF THE RECORD.
7 I THINK IT'S HARD ON JUDITH WHEN WE HAVE
8 CHITCHAT. WE CAN DO THEM ONE AT A TIME AND GO ON THE RECORD
9 AS SOON AS I RULE ON EACH ONE.
10 MS. CHABER: THAT'S FINE, YOUR HONOR.
11 THE COURT: WE ARE OFF THE RECORD.
12 (DISCUSSION OFF THE RECORD)
13 THE COURT: WE'RE BACK ON THE RECORD.
14 AFTER OUR DISCUSSION OFF THE RECORD, COUNSEL HAVE
15 AGREED THAT THERE IS GOING TO BE A COUPLE OF OBJECTIONS THAT
16 MAY BE MADE ON THE RECORD AT THE TIME OF THE READING, AND
17 THE COURT WILL RULE ON THEM THEN.
18 THERE IS ONLY ONE ISSUE RIGHT NOW THAT THE
19 PARTIES WANT TO PUT ON THE RECORD, AND IT'S THE COURT'S
20 RULING ON PAGE 12, LINE 23 THROUGH PAGE 13, LINE 11 OF THE
21 TRANSCRIPT DATED --
22 MS. CHABER: DATED NOVEMBER 24TH, 1998.
23 THE COURT: OKAY. STARTING ON LINE 23 WITH THE
24 WORDS "KEEP IT THERE."
25 FOR THE RECORD, WHAT'S THE OBJECTION?
26 MR. BARRON: YOUR HONOR, THE OBJECTION IS NO
27 FOUNDATION AND RELEVANCE AND 352.
28 THE COURT: AND YOUR POSITION IS WHAT?

1705

1 MS. CHABER: MY POSITION IS THAT THERE
2 IS RELEVANCE. THE RELEVANCE IS THE FDA GRAS --
3 G-R-A-S -- APPROVAL OF FOOD PRODUCTS.
4 AND ALL HE IS DOING IS GIVING AN EXAMPLE OF WAYS
5 THAT COMPANIES CAN MAKE THOSE CHANGES AND REMOVE AN
6 INGREDIENT FROM SOMETHING AND STILL HAVE PEOPLE APPROVE OR
7 HAVE IT BE POPULAR. IT'S MAKING AN ANALOGY. IT GOES TO HIS
8 STATE OF MIND AS TO WHY HE LEFT THE COMPANY BECAUSE THEY
9 FAILED TO DO A SIMILAR KIND OF THING.
10 THE COURT: ALL RIGHT. THE RULING IS THE COURT
11 SUSTAINS THE OBJECTION ON THE GROUNDS OF LACK OF FOUNDATION
12 AND 352, IN THAT THE PROBATIVE VALUE IS OUTWEIGHED BY THE
13 POTENTIAL PREJUDICE AND CONFUSION, GIVEN THE FACT THAT
14 THERE'S NO FOUNDATION IN THE RECORD FOR THE WITNESS'

15 COMPARISON TO DECAFFEINATED COLAS.
16 AND FURTHER, WITH RESPECT TO 352, THE PLAINTIFF
17 IS GETTING THE ESSENTIAL RELEVANCE OUT OF THE ANSWER TO THE
18 QUESTION BY WHAT IS LEFT IN THE ANSWER, WHICH IS ALLOWED TO
19 BE READ, WHICH IS THE ANSWER PRIOR TO THE WORDS "KEEP IT
20 THERE."
21 SO THERE'S AN ADEQUATE EXPLANATION OF THE
22 WITNESS' REASON FOR LEAVING THE COMPANY WITHOUT THE
23 COMPARISON TO A SITUATION AS TO WHICH THE WITNESS HAS NO
24 FOUNDATION AS SHOWN BY THE RECORD.
25 SO THAT'S THE RULING ON THAT.
26 DO YOU WANT TO STAY ON THE RECORD OR GO OFF THE
27 RECORD?
28 MR. BROWN: I'D LIKE TO STAY ON THE RECORD AND
1706
1 PUT ON THE RECORD OUR OBJECTION TO SOME MATTERS THAT WERE
2 EXCLUDED FROM DR. MELE'S DEPOSITION.
3 THAT'S ONE MATTER, ACTUALLY.
4 THE COURT: CAN I HAVE A COPY OF THE
5 TRANSCRIPT?
6 MR. BROWN: VOLUME 160. WHAT PAGE ARE WE ON?
7 THE COURT: VOLUME 160.
8 DO YOU HAVE THAT UP HERE?
9 MS. MASON: YOUR HONOR, I NEED TO SUBSTITUTE A
10 NEW COPY BASED ON WHAT WE AGREED WE WOULD DO LAST NIGHT.
11 MR. BROWN: WE ARE ON 17754. THAT'S IN VOLUME
12 160.
13 THE COURT: OKAY. THAT'S PLAINTIFFS' EXHIBIT
14 1835 FOR IDENTIFICATION.
15 AND WHAT LINES ARE WE TALKING ABOUT?
16 MR. BROWN: THE MATTERS THAT YOU EXCLUDED WERE
17 THE PORTION OF THE ANSWER TO THE QUESTION THAT STARTED ON
18 LINE 1, AND WHAT YOU EXCLUDED WAS LINES 6 THROUGH 9.
19 THE COURT: RIGHT. OKAY.
20 AND FOR THE RECORD, WHY DON'T YOU PUT ON THE
21 RECORD WHAT YOUR OBJECTION WAS.
22 MS. MASON: OUR OBJECTION, YOUR HONOR, WAS LACK
23 OF FOUNDATION AND SPECULATION AND NONRESPONSIVE.
24 THE COURT: AND THE COURT SUSTAINED THOSE.
25 MR. BROWN: YES.
26 AND, YOUR HONOR, FOR THE RECORD, WE OBJECTED --
27 OR WE TOOK ISSUE WITH THE COURT'S RULING, BECAUSE WE CONTEND
28 NONE OF THOSE OBJECTIONS FIT, AND THAT THIS IS A HEARSAY
1707
1 EXCEPTION OF ADMISSION AGAINST INTEREST.
2 AND WHAT IS BEING QUOTED ARE THINGS THAT WERE
3 SAID BY JIM CHARLES, DR. OSDENE AND DR. DENOBLE, ALL OF WHOM
4 WERE SENIOR MANAGEMENT PEOPLE AT PHILIP MORRIS, DEALING
5 DIRECTLY WITH THE SUBJECT MATTER OF THEIR ADMISSIONS HEREIN.
6 THE COURT: IN THE COURT'S VIEW, THERE IS NO --
7 I STATED THE RULING, BUT TO RESPOND SPECIFICALLY TO WHAT
8 YOU'RE SAYING, THERE IS NO FOUNDATION FOR THIS OPINION OR
9 CONCLUSION GIVEN BY THE WITNESS AS SHOWN IN THE TRANSCRIPT
10 OF THIS RECORD.
11 MR. BROWN: WE WOULD JUST POINT OUT, YOUR HONOR,
12 IF THAT RULING IS INVOKED AS STRICTLY AS YOU DID, THERE
13 WOULD NEVER BE AN ADMISSION AGAINST INTEREST ADMITTED AT ANY
14 TIME.
15 THE COURT: WITH ALL DUE RESPECT TO YOU, MR.
16 BROWN, I DON'T THINK THAT'S AN ACCURATE OR CORRECT
17 STATEMENT.
18 MR. BROWN: THE OTHER MATTER --
19 THE COURT: WAIT.

20 MS. MASON, DO YOU WANT TO RESPOND?
21 MS. MASON: YOUR HONOR, I JUST OBJECT TO HIS
22 CHARACTERIZATION THAT SOME OF THESE PEOPLE WERE SENIOR
23 EXECUTIVES. I DON'T NEED TO BOTHER WITH THAT RIGHT NOW.
24 MR. BROWN: THE OTHER MATTER, YOUR HONOR, IS TWO
25 LETTERS THAT WERE REFERRED TO IN THE TESTIMONY THAT WAS
26 ADMITTED, AND THOSE ARE IN OUR EVIDENCE IN ORDER OF THEIR
27 CHRONOLOGICAL ORDER, OUR EXHIBIT 630, WHICH IS A LETTER
28 DATED APRIL 23RD, 1986, FROM THE ASSISTANT GENERAL COUNSEL
1708
1 TAUSSIG TO DR. MELE.
2 THE COURT: MR. BROWN, CAN I JUST ASK YOU A
3 QUESTION: I HAVEN'T LOOKED AT THAT YET, HAVE I?
4 MR. BROWN: NO.
5 THE COURT: CAN WE JUST GO OFF THE RECORD FOR A
6 MINUTE AND LET ME LOOK AT WHAT YOU'RE TALKING ABOUT.
7 MR. BROWN: SURE.
8 (DISCUSSION OFF THE RECORD)
9 THE COURT: WE ARE BACK ON THE RECORD AFTER A
10 DISCUSSION BETWEEN COUNSEL OFF THE RECORD.
11 IT TURNS OUT THAT THERE IS NO OBJECTION BY THE
12 DEFENSE TO THE DOCUMENTS THAT MR. BROWN WAS ABOUT TO REFER
13 TO, SO WE NEED NOT SAY ANYTHING MORE ABOUT THAT ON THE
14 RECORD.
15 (DISCUSSION OFF THE RECORD)
16 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
17 COURTROOM, IN THE PRESENCE OF THE JURY,
18 AT 10:15 A.M.)
19 THE COURT: GOOD MORNING, EVERYBODY.
20 OKAY, MS. CHABER. WHAT IS NEXT?
21 MS. CHABER: AT THIS TIME, THE PLAINTIFF WOULD
22 LIKE TO READ FROM THE TRIAL TESTIMONY OF IAN UYDESS,
23 U-Y-D-E-S-S, TAKEN IN FLORIDA ON NOVEMBER 24TH, 1998.
24 AND I WOULD HAVE MARKED AS PLAINTIFFS' NEXT IN
25 ORDER THE TRANSCRIPT. AND I HAVE A COPY FOR THE COURT.
26 THE CLERK: PLAINTIFFS' EXHIBIT 1851.
27 (DOCUMENT MORE PARTICULARLY
28 LISTED IN THE INDEX MARKED
1709
1 FOR IDENTIFICATION PLAINTIFFS'
2 EXHIBIT # 1851)
3 MS. CHABER: AND IF I COULD CALL MR. UYDESS TO
4 THE STAND (ADDRESSING MR. RAY GOLDSTEIN).
5 YOUR HONOR, I ASSUME THAT BEFORE THE READING OF
6 MR. MELE'S DEPOSITION, THAT THE COURT INSTRUCTED THE JURY ON
7 DEPOSITIONS OR PRIOR TESTIMONY?
8 THE COURT: I DID IT ALREADY. I DID IT.
9 FIRST OF ALL, I DID IT WITH RESPECT TO THE
10 DEPOSITION TESTIMONY WHEN I GAVE MY PRELIMINARY
11 INSTRUCTIONS.
12 MS. CHABER: YES, I KNEW YOU DID IT THEN.
13 THE COURT: I DON'T KNOW IF YOU WERE HERE, BUT
14 THE LAST TIME PRIOR TRIAL TESTIMONY WAS READ, I TOLD THE
15 JURY THEY WERE TO CONSIDER THAT JUST AS IF IT WAS TESTIMONY
16 GIVEN HERE IN COURT. IT'S JUST LIKE DEPOSITION TESTIMONY.
17 MS. CHABER: THANK YOU, YOUR HONOR. YOU'RE
18 CORRECT. I WASN'T HERE, AND THAT'S WHY I ASKED.
19 THE COURT: OKAY. FOR THE RECORD, I UNDERSTAND
20 THAT 1851 FOR IDENTIFICATION SHOWS WHAT IS ABOUT TO BE READ.
21 AND WE ARE READY TO THE GO OFF THE RECORD FOR THE
22 READING.
23 MS. CHABER: YES, YOUR HONOR. WE'LL NEED TO GO
24 ON THE RECORD AT TWO OR THREE DIFFERENT POINTS.

25 THE COURT: IF I'M CALLED UPON TO MAKE A RULING
26 BECAUSE THERE IS AN OBJECTION, COUNSEL, JUST PLEASE STATE
27 THE WORDS "ON THE RECORD" BEFORE YOU START STATING THE
28 OBJECTION, AND THEN JUDITH WILL KNOW THAT SHE NEEDS TO TAKE
1710

1 IT DOWN.

2 MS. CHABER: THANK YOU.

3 AND STILL ON THE RECORD, I JUST WOULD NOTE THAT
4 ATTORNEYS FOR PHILIP MORRIS AND R.J. REYNOLDS WERE PRESENT
5 AT THE TIME OF THIS TESTIMONY.

6 (PRIOR TRIAL TESTIMONY READ)

7 MS. MASON: ON THE RECORD, PLEASE, YOUR HONOR.

8 THE COURT: YES.

9 MS. MASON: WE HAVE AN OBJECTION TO LINES 15
10 THROUGH 21 ON THE BASIS OF FOUNDATION, 352 AND INADMISSIBLE
11 OPINION.

12 MS. CHABER: THAT'S AT PAGE 20.

13 THE COURT: SUSTAINED ON THE GROUNDS OF
14 FOUNDATION AND 352. AND INADMISSIBLE OPINION AS WELL. ALL
15 THREE.

16 MS. MASON: THANK YOU, YOUR HONOR.

17 (PRIOR TRIAL TESTIMONY READ)

18 THE COURT: ON THE RECORD. MS. MASON, WE NEED
19 TO BREAK FOR LUNCH HERE. WE NEED TO FIND A LOGICAL PLACE.

20 MS. MASON: THIS IS AS LOGICAL AS ANY.

21 THE COURT: LET'S BREAK FOR LUNCH.

22 JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION
23 OVER THE NOON HOUR. HAVE A GOOD LUNCH.

24 AND WE'LL SEE YOU AT 1:30.

25 (LUNCH RECESS TAKEN AT 11:55 A.M.)
26
27
28

1711

1 AFTERNOON SESSION 1:35 P.M.

2 FRIDAY, JANUARY 28, 2000

3 THE COURT: GOOD AFTERNOON, EVERYBODY. I THINK
4 WE ARE READY TO PICK UP WITH THIS DEPOSITION READING. WE
5 WERE ON PAGE, I GUESS, 65.

6 AND WE CAN GO OFF THE RECORD FOR THE COMPLETION
7 OF THE READING.

8 (DISCUSSION OFF THE RECORD)

9 THE COURT: LET ME CORRECT THAT. FOR THE
10 RECORD, IT'S NOT A DEPOSITION. IT'S PRIOR TRIAL TESTIMONY.
11 WE CAN GO OFF THE RECORD.

12 (PRIOR TRIAL TESTIMONY READ)

13 MS. MASON: BACK ON THE RECORD, PLEASE, YOUR
14 HONOR.

15 THERE'S AN OBJECTION, PAGE 96, LINES 14 THROUGH
16 16, ON LACK OF FOUNDATION AND INADMISSIBLE OPINION AND 352.

17 THE COURT: 14 THROUGH 16?

18 MS. MASON: I'M SORRY. 14 THROUGH 17.

19 THE COURT: WHAT ARE THE LEGAL GROUNDS?

20 MS. MASON: LACK OF FOUNDATION, INADMISSIBLE
21 OPINION AND 352.

22 THE COURT: SUSTAINED ON THOSE GROUNDS

23 MS. CHABER: JUST TO CLARIFY. I ASSUME THAT THE
24 COURT IS EXTENDING THAT TO 97, LINES 1 AND 2?

25 THE COURT: YES. THAT'S THE ANSWER AND --

26 MS. CHABER: I UNDERSTAND. I JUST WANT TO MAKE
27 SURE FOR THE RECORD IT WAS CLEAR.

28 THE COURT: OKAY. I WISH YOU'D LET ME GET THE
1712

1 WORDS OUT.
2 I WAS GOING TO ANSWER YOUR QUESTION.
3 I UNDERSTAND YOUR POINT. AND WHEN I SAY I
4 SUSTAINED AN OBJECTION TO THE QUESTION, IT OBVIOUSLY
5 ENCOMPASSES THE ANSWER TO THAT QUESTION.
6 SO THE ANSWER IS YES.
7 (PRIOR TRIAL TESTIMONY READ)
8 THE COURT: WE ARE BACK ON THE RECORD.
9 I THINK WE ARE READY FOR OUR NEXT WITNESS.
10 MS. CHABER: WE'RE GOING TO PUBLISH SOME
11 DOCUMENTS, YOUR HONOR. I'D LIKE YOU --FIRST, LET ME MOVE
12 SOME DOCUMENTS INTO EVIDENCE.
13 THE COURT: AND THEN I'LL EXPLAIN TO THE JURY
14 WHAT WE'RE DOING.
15 MS. CHABER: I'D LIKE TO MOVE THE FOLLOWING
16 DOCUMENTS INTO EVIDENCE.
17 DOCUMENT 25.
18 THE COURT: ARE WE GOING TO DO THEM ONE AT A
19 TIME?
20 MS. CHABER: I'LL GO THROUGH THEM ALL. I DIDN'T
21 KNOW IF THE COURT WAS WAITING.
22 THE COURT: I THINK THEY ALL FALL LOGICALLY IN A
23 GROUP, OR AT LEAST IN TERMS OF THE OBJECTIONS.
24 MS. CHABER: YES.
25 THE COURT: OKAY.
26 MS. CHABER: DOCUMENTS 25, 111, 295, 299, 301,
27 302, 303, 306, 307, 309, 310, 311, 312, 314, 317, 322, 324,
28 335, 357, 368, 397, 402, 436.10.
1713
1 THE COURT: .01 OR .10?
2 MS. CHABER: I'M SORRY. 436.01 THROUGH 436.21.
3 THE COURT: I SHOULD TELL THE JURORS, THE REASON
4 THAT I KNOW THIS IS WE HAD THIS DISCUSSION BEFORE YOU GOT
5 HERE.
6 WE ARE PUTTING IT ON THE RECORD, THE OFFER OF
7 THESE DOCUMENTS.
8 SO THAT'S 436.01 THROUGH 436.21?
9 MS. CHABER: YES.
10 THE COURT: OKAY.
11 MS. CHABER: 438, 449, 727, 1212 -- I JUST
12 CORRECTED MYSELF -- THAT'S 1212, 1215, 1226, 1244, 1252,
13 1285, 1298, 1299, 1355, 1357 THROUGH AND INCLUSIVE OF 1363,
14 1414, 1514, AND 1557.
15 THE COURT: LET ME ASK --
16 MS. CHABER: THAT'S ONE CATEGORY, YOUR HONOR.
17 THE COURT: ARE THERE ANY OBJECTIONS TO ANY OR
18 ALL OF THOSE DOCUMENTS?
19 MS. MASON: THERE ARE, YOUR HONOR. TWO.
20 FIRST, THERE IS A MISTAKE. 397 IS ONE OF THE
21 DOCUMENTS WE DISCUSSED THIS MORNING AND DID NOT RESOLVE.
22 THE COURT: WHICH ONE?
23 MS. MASON: 397. AND IT'S MISTAKENLY ON THIS
24 LIST. IT'S ONE WE DISCUSSED THIS MORNING.
25 THE COURT: I DON'T RECALL.
26 MS. CHABER: I DON'T RECALL EITHER.
27 THE COURT: DO YOU WANT TO WITHDRAW THE OFFER OF
28 THAT ONE NOW AND WE'LL DO THAT ON OUR OWN TIME?
1714
1 MS. CHABER: YES.
2 THE COURT: FOR THE MOMENT, YOU ARE WITHDRAWING
3 WITHOUT PREJUDICE THE OFFER OF 397; CORRECT?
4 MS. CHABER: YES.
5 THE COURT: OKAY.

6 ARE THERE ANY OBJECTIONS TO ANY OR ALL OF THE
7 DOCUMENTS THAT ARE NOW BEING OFFERED, WITH THE UNDERSTANDING
8 THAT 397, THAT THAT OFFER IS BEING WITHDRAWN FOR THE MOMENT
9 WITHOUT PREJUDICE?

10 MS. MASON: YES, YOUR HONOR. AS TO THE
11 REMAINING DOCUMENTS, WE OBJECT ON THE BASIS OF HEARSAY,
12 WHICH WAS PREVIOUSLY BROUGHT TO THE COURT'S ATTENTION.

13 THE COURT: ON THAT ONE, I'M GOING TO OVERRULE
14 THAT OBJECTION.

15 BUT I'M GOING TO TELL THE JURY THAT I WILL GIVE
16 YOU SOME INSTRUCTIONS AT THE END OF THE CASE RELATING TO
17 THIS GROUP OF DOCUMENTS.

18 BUT IN THE MEANWHILE, I'M OVERRULING THE
19 OBJECTIONS.

20 SO THOSE ARE RECEIVED.

21 (DOCUMENTS MORE PARTICULARLY
22 LISTED IN THE INDEX RECEIVED
23 IN EVIDENCE AS PLAINTIFFS'
24 EXHIBIT #S 25, 111, 295, 299,
25 301, 302, 303, 306, 307, 309,
26 310, 311, 312, 314, 317, 322,
27 324, 335, 357, 368, 402, 436.01-
28 436.21, 438, 449, 727, 1212,

1715
1 1215, 1226, 1244, 1252, 1285,
2 1298, 1299, 1355, 1357-1363,
3 1414, 1514 & 1557)

4 MS. CHABER: AS TO THESE, YOUR HONOR, THERE ARE
5 DIFFERENT CATEGORIES.

6 THE COURT: OKAY.

7 MS. CHABER: THERE ARE SOME THAT ARE OBJECTED
8 TO, SO WE MIGHT WANT TO GET THAT ON THE RECORD, AND THEN WE
9 CAN DEAL WITH THE OBJECTIONS ON OUR OWN TIME AT THE END.

10 THE COURT: CAN I JUST ASK YOU THIS: IF WE ARE
11 GOING TO DEAL WITH THEM ON OUR OWN TIME, WHY DON'T WE HOLD
12 OFF ON THE OTHERS. WE'LL DO THAT AFTER WE HAVE MET AND
13 DISCUSSED THESE. IF THERE ARE ANY TO WHICH THERE ARE NO
14 OBJECTIONS THAT YOU ADD WANT NOW, WHY DON'T WE OFFER THEM
15 AND DEAL WITH THE REMAINDER ON OUR TIME.

16 I THINK THAT WOULD MAKE IT FASTER FOR THE JURY.

17 MS. CHABER: THAT'S FINE. I'M LOOKING FOR THE
18 LIST.

19 THE COURT: MY NOTES FROM OUR DISCUSSION THIS
20 MORNING INDICATE THERE'S TWO MORE THAT I KNOW OF.

21 MS. CHABER: TWO MORE DOCUMENTS.

22 THE COURT: TWO I THINK YOU ARE GOING TO OFFER
23 TO WHICH THERE WAS NO OBJECTION.

24 MS. CHABER: THERE'S MANY THAT THERE ARE NO
25 OBJECTION. WE JUST DISCUSSED A COUPLE, YOUR HONOR. THAT'S
26 WHAT MY POINT WAS.

27 THE COURT: I DIDN'T KNOW THAT.

28 MS. CHABER: I JUST THOUGHT IT MIGHT ACTUALLY BE

1716
1 EASIER TO JUST GET THE QUICK OBJECTION ON THE RECORD AND
2 WE'LL DEAL WITH THEM ON OUR OWN TIME.

3 THE COURT: I HAVE A STRONG PREFERENCE DO IT
4 DIFFERENTLY.

5 MS. CHABER: OKAY.

6 THE COURT: SINCE I CAN'T RULE ON THE ONES THAT
7 THERE ARE OBJECTIONS TO NOW, BECAUSE I HAVEN'T SEEN THEM,
8 WHY DON'T YOU OFFER THE ONES NOW TO WHICH THERE IS NO
9 OBJECTION, AND THEN LET ME RECEIVE THOSE.

10 AND THEN, ON OUR TIME, WE'LL WORK OUT THE OTHERS

11 AND THE OBJECTIONS, SO THAT WE CAN PUT THEM ON THE RECORD IN
12 FRONT OF THE JURY IN A MORE EXPEDITIOUS MANNER THAN HAVING
13 TO DO IT TWICE, BECAUSE I'D HAVE TO GO BACK OVER THEM, ONCE
14 I'VE LOOKED AT THEM, UNLESS YOU HAVE SOME OBJECTION TO THAT.

15 MS. CHABER: NO. MY ONLY OBJECTION IS, YOUR
16 HONOR, I HAVE A LIST OF THE COMPLETE SET, AND NOT OF THE
17 LIST AS IT IS OBJECTED TO.

18 THE COURT: SO YOU DON'T HAVE A LIST OF THOSE TO
19 WHICH THERE'S NO OBJECTION?

20 MS. CHABER: I HAVE THE FULL LIST, AND THERE
21 WERE SEVERAL OBJECTIONS THAT WERE RAISED THIS MORNING THAT
22 HAD NOT BEEN RAISED PREVIOUSLY.

23 THE COURT: WHY DON'T WE DO THIS --

24 MS. CHABER: I'D LIKE TO OFFER --

25 THE COURT: WHY DON'T --

26 MS. CHABER: I'M SORRY.

27 THE COURT: WHY DON'T YOU READ THE WHOLE LIST,
28 AND THE ONES TO WHICH THERE IS OBJECTION, WHY DON'T YOU

1717

1 WITHDRAW THE OFFER OF THEM NOW, AND THAT WAY, WE'LL FIGURE
2 OUT WHAT'S WHAT.

3 MS. CHABER: AN EXCELLENT SOLUTION.

4 THE COURT: OKAY. THAT'S ALL RIGHT WITH
5 EVERYBODY HERE?

6 MS. MASON: YES.

7 MR. FURR: YES.

8 THE COURT: WHY DON'T YOU GIVE US THE LIST OF
9 WHAT YOU ARE OFFERING. TO THE EXTENT THERE IS OBJECTION TO
10 ANY OF THESE, YOU WILL WITHDRAW THEM NOW. WE'LL DEAL WITH
11 THEM ON OUR OWN TIME. YOU CAN REOFFER THEM LATER.

12 MS. CHABER: YES, YOUR HONOR.

13 THE COURT: OKAY. THAT'S A GOOD SOLUTION.

14 MS. CHABER: AND JUST TO CLARIFY, IN THE
15 NUMBERING, I WILL BE READING A PREFIX NUMBER, WHICH
16 INDICATES THE BINDER NUMBER OF THE EVIDENCE, WHICH I DIDN'T,
17 UNFORTUNATELY, IN THE LAST GROUP.

18 THE COURT: WHY DON'T YOU SAY "13-72."

19 MS. CHABER: YES. THAT'S WHAT I WAS GOING TO
20 DO.

21 1-3, 1-29, 1-33, 2-67, 2-77, 3-116, 3-120, 4-146,
22 4-165, 4-199, 7-365, 8-371, 8-380 -- EXCUSE ME. I WITHDRAW
23 THAT ONE.

24 8-397, 9-421, 9-423, 12-543, 22-807.

25 THE COURT: 807?

26 MS. CHABER: 807.

27 24-1001, 24-1025, 27-1096, 28-1138, 39-1486,
28 41-1559.

1718

1 THE COURT: OKAY. WHY DON'T WE DO THIS. WHY
2 DON'T WE HAVE THE DEFENSE TELL US JUST THE NUMBERS OF THOSE
3 TO WHICH YOU HAVE NO OBJECTION, AND ANY NUMBER THAT YOU
4 MENTION, THAT DOCUMENT WILL BE RECEIVED INTO EVIDENCE.

5 AND IT WILL BE DEEMED THAT THE OFFER OF THE
6 REMAINING DOCUMENTS IS WITHDRAWN WITHOUT PREJUDICE.

7 MS. CHABER: THE FIRST ONE IS 1-3.

8 AND, YOUR HONOR IT'S ALREADY IN EVIDENCE, SO I
9 APOLOGIZE.

10 MS. MASON: THERE ARE SEVERAL, ACTUALLY.

11 THE COURT: 1-3 ALREADY IS. SO WE ARE NOT GOING
12 TO REOFFER 1-3. THAT'S ALL RIGHT IN EVIDENCE.

13 MS. CHABER: I'M SORRY. AS I GUESS TO THOSE,
14 1-25 IS ALSO IN EVIDENCE.

15 THE COURT: IS IT?

16 MS. CHABER: YES.
17 THE COURT: SO THAT'S NOT BEING REOFFERED
18 BECAUSE IT'S ALREADY IN EVIDENCE.
19 MS. CHABER: 1-33 IS ALREADY IN EVIDENCE.
20 THE COURT: ALL RIGHT. THAT'S NOT BEING OFFERED
21 THEN.
22 AND IS THAT IT?
23 MS. CHABER: I BELIEVE SO. I WILL KEEP CHECKING
24 AS WE GO ALONG.
25 THE COURT: OKAY. ALL RIGHT.
26 MS. MASON, ARE YOU GOING TO TELL US THE NUMBERS
27 OF THOSE TO WHICH YOU HAVE NO OBJECTION? THEN I WON'T
28 REPEAT THEM LATER. THEY WILL BE RECEIVED, THE ONES THAT YOU
1719
1 NOW READ OFF.
2 MS. MASON: YES, YOUR HONOR.
3 NO. 77.
4 THE COURT: WHAT? 2-77?
5 MS. MASON: I DON'T HAVE THE BINDER NUMBER ON
6 MINE, YOUR HONOR.
7 THE COURT: THAT'S 2-77; CORRECT?
8 MS. MASON: YES.
9 MS. CHABER: THESE ARE THE NONOBJECTED-TO ONES.
10 THE COURT: THESE ARE THE NONOBJECTED-TO
11 EXHIBITS.
12 THESE ARE BEING RECEIVED. AND THE OFFERS OF THE
13 OTHERS ARE BEING WITHDRAWN WITHOUT PREJUDICE AND EVERYBODY
14 HAS SAID THAT IS SATISFACTORY, AS I UNDERSTAND IT.
15 WE UNDERSTAND THAT YOU'RE ONLY READING THE LAST
16 NUMBERS. I'LL CHIME IN WITH THE PREFIX, JUST TO BE SURE.
17 277 IS RECEIVED.
18 (DOCUMENT MORE PARTICULARLY
19 LISTED IN THE INDEX RECEIVED
20 IN EVIDENCE AS PLAINTIFFS'
21 EXHIBIT # 277)
22 MS. MASON: 116.
23 THE COURT: 3-116 IS RECEIVED.
24 (DOCUMENT MORE PARTICULARLY
25 LISTED IN THE INDEX RECEIVED
26 IN EVIDENCE AS PLAINTIFFS'
27 EXHIBIT # 116)
28 MS. MASON: 120 IS ALREADY ADMITTED, YOUR HONOR.
1720
1 MS. CHABER: YES, THAT'S CORRECT.
2 MR. HARDY: WAS THE NEXT NUMBER 4-146?
3 MS. CHABER: YES.
4 THE COURT: 3-120 IS ALREADY IN EVIDENCE?
5 MS. CHABER: YES.
6 THE COURT: OKAY.
7 MS. MASON: 146.
8 THE COURT: 4-146 IS RECEIVED
9 (DOCUMENT MORE PARTICULARLY
10 LISTED IN THE INDEX RECEIVED
11 IN EVIDENCE AS PLAINTIFFS'
12 EXHIBIT # 146)
13 MS. MASON: 199.
14 THE COURT: 4-199 IS RECEIVED.
15 (DOCUMENT MORE PARTICULARLY
16 LISTED IN THE INDEX RECEIVED
17 IN EVIDENCE AS PLAINTIFFS'
18 EXHIBIT # 199)
19 MS. MASON: 365.
20 THE COURT: 7-365 IS RECEIVED.

21 (DOCUMENT MORE PARTICULARLY
22 LISTED IN THE INDEX RECEIVED
23 IN EVIDENCE AS PLAINTIFFS'
24 EXHIBIT # 365)
25 MS. MASON: 371.
26 THE COURT: 8-371 IS RECEIVED
27 (DOCUMENT MORE PARTICULARLY
28 LISTED IN THE INDEX RECEIVED
1721
1 IN EVIDENCE AS PLAINTIFFS'
2 EXHIBIT # 371)
3 MS. MASON: 543.
4 THE COURT: 12-543 IS RECEIVED.
5 (DOCUMENT MORE PARTICULARLY
6 LISTED IN THE INDEX RECEIVED
7 IN EVIDENCE AS PLAINTIFFS'
8 EXHIBIT # 543)
9 MS. MASON: 1001.
10 THE COURT: 24-1001 IS RECEIVED.
11 (DOCUMENT MORE PARTICULARLY
12 LISTED IN THE INDEX RECEIVED
13 IN EVIDENCE AS PLAINTIFFS'
14 EXHIBIT # 1001)
15 MS. MASON: 1025.
16 THE COURT: 24-1025 IS RECEIVED.
17 (DOCUMENT MORE PARTICULARLY
18 LISTED IN THE INDEX RECEIVED
19 IN EVIDENCE AS PLAINTIFFS'
20 EXHIBIT # 1025)
21 MS. MASON: 1096.
22 THE COURT: 27-1096 IS RECEIVED.
23 (DOCUMENT MORE PARTICULARLY
24 LISTED IN THE INDEX RECEIVED
25 IN EVIDENCE AS PLAINTIFFS'
26 EXHIBIT # 1096)
27 MS. MASON: AND THEN I THINK LAST ONE, YOUR
28 HONOR, IS 1486.
1722
1 THE COURT: 39-1486 IS RECEIVED.
2 (DOCUMENT MORE PARTICULARLY
3 LISTED IN THE INDEX RECEIVED
4 IN EVIDENCE AS PLAINTIFFS'
5 EXHIBIT # 1486)
6 THE COURT: PURSUANT TO THE UNDERSTANDING, HERE
7 ARE THE DOCUMENTS AS TO WHICH PLAINTIFFS' OFFER IS BEING
8 WITHDRAWN AT THE PRESENT TIME.
9 I'M JUST GOING TO READ THEM SO EVERYBODY IS IN
10 AGREEMENT HERE.
11 MS. CHABER: YES.
12 THE COURT: IF YOU WANT TO OFFER THEM, YOU ARE
13 GOING TO NEED TO REOFFER THEM.
14 THAT'S UNDERSTOOD?
15 MS. CHABER: YES.
16 THE COURT: OKAY. 2-67, 4-165, 8-397, 9-421,
17 9-423, 22-807, AND 41-1559.
18 DO OUR LISTS JIBE ON THAT? THOSE ARE NOT BEING
19 OFFERED RIGHT NOW?
20 MR. HARDY: THERE WAS 28-1138.
21 THE COURT: THAT'S RIGHT. I MISSED THAT. AND
22 ALSO 28-1138. THAT'S BEING WITHDRAWN FOR THE MOMENT.
23 NOW, DO WE HAVE THEM ALL? WE ARE ALL IN
24 AGREEMENT?
25 MR. HARDY: YES, YOUR HONOR.

26 THE COURT: ALL IN AGREEMENT.
27 MS. CHABER: I WAS GOING TO PUBLISH SOME OF
28 THESE DOCUMENTS.
1723
1 THE COURT: LET ME JUST TELL THE JURY, THE
2 LAWYERS HAVE REACHED AN AGREEMENT ABOUT PUBLISHING DOCUMENTS
3 TO YOU AT A TIME WHEN THERE'S NO WITNESS ON THE WITNESS
4 STAND.
5 AND LET ME SEE IF I CAN DESCRIBE THE ARRANGEMENT
6 TO YOU. WHAT THEY'RE GOING TO BE ALLOWED TO DO IS TO TAKE A
7 COUPLE OF OPPORTUNITIES IN A GIVEN WEEK TO PUBLISH DOCUMENTS
8 TO YOU.
9 DURING THE PRESENTATION OF THE PLAINTIFFS' CASE,
10 THE PLAINTIFF WILL MAKE A DETERMINATION AS TO WHICH
11 DOCUMENTS THAT ARE ALREADY RECEIVED IN EVIDENCE OR WHAT
12 PORTIONS OF THEM THE PLAINTIFF WANTS TO PUBLISH.
13 THE DEFENSE AT THAT TIME WILL BE ALLOWED TO READ
14 TO YOU FROM OTHER PORTIONS OF THAT DOCUMENT OR TO OTHER
15 DOCUMENTS WHICH COUNSEL -- LET ME BE SURE I HAVE THIS RIGHT,
16 COUNSEL. I WANT TO BE SURE I HAVE THIS RIGHT.
17 THE DEFENSE, UNDER YOUR AGREEMENT, THEN IS ABLE
18 TO READ OTHER PORTIONS TO THE JURY OF THE SAME DOCUMENTS AND
19 ANY OTHER DOCUMENTS THAT ARE ALREADY IN EVIDENCE THAT THE
20 DEFENSE BELIEVES PERTAIN, AND THE COURT DECIDES PERTAIN, IF
21 THERE'S AN ISSUE, TO WHAT HAS BEEN READ BY PLAINTIFFS'
22 COUNSEL -- RIGHT? -- AND THEN DURING THE DEFENSE'S CASE,
23 THE DEFENSE WILL HAVE AN OPPORTUNITY ON A COUPLE OF
24 OCCASIONS DURING A GIVEN WEEK TO DO THE SAME THING. AND THE
25 PLAINTIFF WILL HAVE AN OPPORTUNITY TO RESPOND IN THE SAME
26 WAY.
27 AND THAT WAY, THE LAWYERS CAN READ TO YOU FROM
28 DOCUMENTS THAT ARE ALREADY IN EVIDENCE WITHOUT HAVING TO
1724
1 WAIT UNTIL THEIR CLOSING ARGUMENTS AT THE END OF THE CASE TO
2 READ TO YOU FROM THOSE DOCUMENTS.
3 IT DOESN'T PREVENT THEM FROM ASKING WITNESSES
4 QUESTIONS ABOUT THOSE DOCUMENTS, BUT THEY MAY OR MAY NOT
5 HAVE WITNESSES THAT HAVE SOMETHING TO ADD TO THE DOCUMENTS.
6 SO THIS WILL GIVE THEM EACH A CHANCE TO PUBLISH
7 TO YOU DURING THE COURSE OF THE TRIAL SOME OF THE DOCUMENTS
8 THAT THEY WANT TO DO. AND THIS IS AN AGREEMENT THAT THEY
9 HAVE MADE BETWEEN THEMSELVES.
10 HAVE I CORRECTLY STATED THE AGREEMENT, I HOPE?
11 MS. CHABER: YES.
12 MS. MASON: YOU HAVE, YOUR HONOR. THERE MAY BE
13 SOME I NEED TO MOVE INTO EVIDENCE, DEPENDING ON WHAT MS.
14 CHABER READS.
15 WE CAN PROBABLY TAKE THAT UP AT A BREAK,
16 ACTUALLY.
17 THE COURT: I'M NOT SURE WHETHER THAT IS
18 RESOLVED OR NOT.
19 MR. HARDY: THE PROBLEM IS --
20 MS. CHABER: THAT WAS NOT RESOLVED.
21 MR. HARDY: -- SINCE WE DON'T KNOW WHAT'S TO BE
22 PUBLISHED --
23 THE COURT: WHY DON'T WE WAIT AND SEE. IT MAY
24 OR MAY NOT EVEN BE AN ISSUE.
25 (ATTORNEYS CONFER)
26 THE COURT: THERE MAY OR MAY NOT BE SOME
27 DOCUMENTS.
28 MS. CHABER: THERE MAY NOT BE AN ISSUE.
1725
1 THE COURT: THERE MAY NOT BE AN ISSUE.

2 LET'S, IN THIS CASE, LIMIT OURSELVES TO ISSUES
3 THAT HAVE ARISEN.
4 MS. CHABER: NOT ALL THE ONES WE CAN THINK OF?
5 THE COURT: EXACTLY. NOT ALL THE THEORETICAL
6 ONES.
7 YOU ARE EXERCISING ONE OF YOUR OPPORTUNITIES, MS.
8 CHABER, TO DO THAT.
9 THE LAWYERS HAVE ALSO AGREED TO LIMIT THE NUMBER
10 OF DOCUMENTS THAT THEY CAN DO THIS WITH RESPECT TO AS WELL.
11 OKAY.
12 COUNSEL, AS I JUST STATED TO THE JURY, YOU HAVE
13 AGREED TO LIMIT YOURSELVES TO THE NUMBER OF DOCUMENTS YOU
14 COULD READ IN THIS WAY. I'M NOT GOING TO KEEP SCORE. I'M
15 GOING TO TRUST YOU ALL TO DO THIS ON YOUR OWN.
16 MS. CHABER: YOUR HONOR, THERE NEEDS TO BE ONE
17 CORRECTION PER THE SWITCHING AROUND OF DOCUMENTS.
18 IF YOUR HONOR WILL RECALL, OVER THE LUNCH HOUR,
19 BASED ON --
20 THE COURT: OKAY. WE HAVE ONE LOGISTICAL
21 PROBLEM.
22 MS. CHABER: IT'S UNDER A DIFFERENT NUMBER.
23 THE COURT: OH.
24 MS. CHABER: DOCUMENT 7-365 --
25 THE COURT: YES.
26 MS. CHABER: -- IS NOW DOCUMENT 4-134.
27 THE COURT: UNDER WHAT NUMBER? IF IT'S THE SAME
28 DOCUMENT, UNDER WHICH NUMBER ARE YOU GOING TO OFFER IT?
1726
1 MS. CHABER: UNDER 4-134.
2 THE COURT: IS THERE ANY OBJECTION THEN TO
3 7-365? I WANT TO BE SURE.
4 MS. CHABER: I MAY BE GETTING ANOTHER NOTE.
5 YES, IT IS NOW UNDER 4-134.
6 THE COURT: LET ME JUST HAVE YOU ALL LISTEN TO
7 WHAT I AM GOING TO SAY, SO YOU'RE ALL IN AGREEMENT. THE
8 UNDERSTANDING IS THAT 7-365 IS BEING WITHDRAWN FROM
9 EVIDENCE?
10 MS. CHABER: YES.
11 THE COURT: BUT 4-134 IS BEING RECEIVED INTO
12 EVIDENCE, AND THERE'S NO OBJECTION TO IT, SINCE IT'S THE
13 SAME DOCUMENT.
14 HAVE I CORRECTLY STATED THE SITUATION?
15 MS. CHABER: YES.
16 MS. MASON: YES.
17 THE COURT: OKAY.
18 (DOCUMENT MORE PARTICULARLY
19 LISTED IN THE INDEX PREVIOUSLY
20 RECEIVED IN EVIDENCE AS PLAINTIFFS'
21 EXHIBIT # 365 IS WITHDRAWN)
22 (DOCUMENT MORE PARTICULARLY
23 LISTED IN THE INDEX RECEIVED
24 IN EVIDENCE AS PLAINTIFFS'
25 EXHIBIT # 134)
26 THE COURT: TATSUO, DO YOU HAVE THAT?
27 THE CLERK: YES, I'VE GOT IT
28 MS. CHABER: YOUR HONOR, COULD WE CONFER FOR A
1727
1 SECOND?
2 THE COURT: WITH ME OR WITH EACH OTHER?
3 MS. CHABER: WITH COUNSEL.
4 THE COURT: YES, YOU CAN CONFER WITH EACH OTHER.
5 (ATTORNEYS CONFER)
6 THE COURT: MY RECORDS SHOW THAT 27-1096 WAS

7 PREVIOUSLY ADMITTED.
8 THE CLERK: THAT'S CORRECT, YES.
9 MS. CHABER: WHICH ONE?
10 THE COURT: 27-1096 WAS PREVIOUSLY ADMITTED.
11 I DON'T KNOW THAT IT MATTERS HOW MANY TIMES YOU
12 ADMIT IT. JUST FOR YOUR RECORDS, THAT'S ALREADY IN
13 EVIDENCE.
14 ACTUALLY, LET'S LEAVE IT AS BEING ADMITTED WHEN
15 IT WAS ADMITTED. THERE'S NO POINT IN MESSING UP THE
16 RECORD. SO IT'S NOT ADMITTED TODAY.
17 IT WAS ADMITTED ON THE 24TH?
18 MS. CHABER: I THINK THAT WAS THE ONLY OTHER DAY
19 WE ADMITTED DOCUMENTS.
20 THE COURT: TATSUO, THAT WAS ADMITTED ON THE
21 24TH?
22 IF TATSUO AGREES WITH ME, LET'S LEAVE THAT ALONE.
23 THE CLERK: THE 24TH.
24 THE COURT: SO THAT'S NOT BEING READMITTED
25 AGAIN.
26 LET ME JUST ADD ONE THING. MY UNDERSTANDING OF
27 THE ARRANGEMENT ALSO IS THAT COUNSEL ARE NOT GOING TO BE
28 COMMENTING ON ANYTHING. ALL THEY'RE GOING TO BE DOING IS
1728
1 READING THE DOCUMENTS TO YOU.
2 MS. CHABER: NO CLOSING ARGUMENTS.
3 THE COURT: CORRECT.
4 MS. CHABER: THIS IS 24-101.
5 THE COURT: YOU'RE GOING TO PUBLISH 24-101?
6 MS. CHABER: I GUESS THE ONLY COMMENT IS HOW
7 LEGIBLE THESE THINGS ARE. SO I'M GOING TO TRY TO READ IT
8 ALONG WITH THE JURY.
9 (COMMENTS BY SEVERAL JURORS)
10 THE COURT: THE JURORS ARE INDICATING THEY CAN'T
11 READ IT FROM THAT FAR AWAY. IT'S TOO FAR AWAY.
12 JUROR NO. 5: I THINK SO.
13 JUROR NO. 15: IT'S JUST BLURRED.
14 JUROR NO. 5: YES.
15 MS. CHABER: YES, IT SURE IS.
16 WE ARE GETTING BETTER.
17 JUROR NO. 4: MUCH BETTER.
18 JUROR NO. 15: MUCH BETTER.
19 THE COURT: AS LONG AS WE'RE READING ANYWAY, I'M
20 NOT SURE THAT IT'S ABSOLUTELY CRITICAL THAT THE JURY CAN
21 READ ALL THE WORDS.
22 MS. CHABER: THIS IS AN "R.J. REYNOLDS TOBACCO
23 COMPANY, WINSTON-SALEM, NORTH CAROLINA,
24 MEMORANDUM, F.G. COLBY, ASSOCIATE DIRECTOR OF
25 SCIENTIFIC ISSUES, RESEARCH DEPARTMENT, DECEMBER
26 9, 1981.
27 "MR. JAY GILES. RE: WEEKLY HIGHLIGHTS.
28 "INFORMATION WAS OBTAINED THAT PHILIP MORRIS-
1729
1 U.S.A. DOES NOT LIVE UP TO THE ALLEGED
2 'GENTLEMEN'S AGREEMENT' OF NOT HAVING ANIMAL
3 LABORATORY FACILITIES ON THEIR PREMISES IN THIS
4 COUNTRY. PM INDEED HAS HAD SUCH FACILITIES FOR
5 AT LEAST THREE TO FOUR YEARS AND CONTINUES TO
6 OPERATE THEM. THIS INFORMATION WAS COMMUNICATED
7 TO ALL CONCERNED.
8 "A DETAILED CRITICAL ASSESSMENT WAS PREPARED ON
9 A PAPER BY DR. BLACKMAN ON SMOKING AND HEALTH.
10 THE BLACKMAN PAPER IS ESSENTIALLY AN ENDORSEMENT
11 OF THE 'SAFER CIGARETTE' CONCEPT.

12 "A NUMBER OF RESEARCH PROPOSALS TO BE GRANTED --
13 OR NOT GRANTED -- BY THE COUNCIL FOR TOBACCO
14 RESEARCH, WERE ASSESSED AT THE REQUEST OF THE
15 LEGAL DEPARTMENT.
16 "I ATTENDED AN ONSITE VISIT AT BATTELLE/COLUMBUS
17 ON THEIR INDUSTRY SPONSORED PUBLIC SMOKING
18 PROJECT."
19 I'M TRYING TO FIND NICE CLEAN COPIES TO PUT UP,
20 YOUR HONOR. I'LL GET THE EVIDENCE COPY.
21 (DISCUSSION OFF THE RECORD)
22 MS. CHABER: SORRY ABOUT THIS.
23 THE COURT: WE NEED TO IMPROVE THE EFFICIENCY.
24 MS. CHABER: THIS IS PLAINTIFF'S 1-3 IN
25 EVIDENCE.
26 THE COURT: WHAT DID YOU SAY, 1- --
27 MS. CHABER: 1-3.
28 THE COURT: OKAY.

1730
1 MS. CHABER: TITLED: "MOTIVES AND INCENTIVES IN
2 CIGARETTE SMOKING, WILLIAM L. DUNN, JR., PHILIP
3 MORRIS RESEARCH CENTER, RICHMOND VIRGINIA."
4 THIS IS GOING TO BE HARD TO READ, SO I'LL READ
5 ALONG.
6 "IN JANUARY, 1972, THE DUTCH SIDE OF ST. MARTIN
7 WAS INVADED BY AN UNLIKELY PARTY OF 75
8 SCIENTISTS."
9 MR. HARDY: "25."
10 MS. CHABER: "25." THANK YOU.
11 "THERE WERE PHARMACOLOGISTS, SOCIOLOGISTS
12 ANTHROPOLOGISTS AND A PREPONDERANCE OF
13 PSYCHOLOGISTS. THEY CAME FROM ENGLAND, CANADA
14 AND THE UNITED STATES. EACH BROUGHT WITH HIM A
15 CAREFULLY PREPARED SCIENTIFIC PAPER WHICH
16 REPRESENTED HIS BEST EFFORTS AT ATTACKING THE
17 QUESTION 'WHY DO PEOPLE SMOKE CIGARETTES?'
18 "INSPIRED BY THE RARE 16TH CENTURY DISPLAY OF
19 HUMAN REASON SHOWN BY THE FRENCH AND DUTCH
20 COLONISTS, AND WHILE NOT SUNNING ON THE BEACH,
21 THEY LISTENED TO AND REFLECTED UPON EACH OTHER'S
22 IDEAS.
23 "YOU'VE HEARD MANY EXPLANATIONS FOR CIGARETTE
24 SMOKING. THESE WERE REVIEWED AT THE ST. MARTIN
25 CONFERENCE. I THINK IT APPROPRIATE THAT WE LIST
26 THE MORE COMMONLY PROPOSED EXPLANATIONS HERE:
27 1) FOR SOCIAL ACCEPTANCE OR EGO ENHANCEMENT;
28 2) FOR PLEASURE OF THE SENSES (TASTE, SMELL);
1731
1 3) FOR ORAL GRATIFICATION IN THE PSYCHOANALYTIC
2 SENSE;
3 4) A PSYCHOMOTOR HABIT FOR THE RELEASE OF BODY
4 TENSION;
5 5) FOR THE PHARMACOLOGICAL EFFECT OF SMOKE
6 CONSTITUENTS.
7 "I MIGHT MENTION ONE OTHER EXPLANATION, NOT
8 BECAUSE ANYBODY BELIEVES IT BUT AS AN EXAMPLE
9 OF HOW DISTORTED ONE'S REASONING CAN BECOME
10 UNDER THE INFLUENCE OF PSYCHOANALYTIC THEORY.
11 SMOKING ACCORDING TO THIS ARGUMENT, IS THE
12 CONSEQUENCE" --
13 THIS I DO HAVE TO COMMENT UPON. THIS IS NOT MY
14 LANGUAGE. THIS IS LANGUAGE IN THE DOCUMENT.
15 THE COURT: WE UNDERSTAND, ON THE RECORD, THAT
16 ALL YOU'RE DOING IS READING THE DOCUMENT.

17 MS. CHABER: I UNDERSTAND. YOUR HONOR WILL
18 UNDERSTAND WHEN YOU HEAR THE NEXT PART.
19 "SMOKING ACCORDING TO THIS ARGUMENT, IS THE
20 CONSEQUENCE OF PULMONARY EROTICISM. TRANSLATED,
21 THIS MEANS THE LUNGS HAVE BECOME SEXUALIZED AND
22 SMOKING IS BUT ANOTHER FORM OF THE SEXUAL ACT.
23 "IF ONE ASKS THE SMOKER HIMSELF WHY HE SMOKES,
24 HE IS MOST LIKELY TO SAY, 'IT'S A HABIT.' IF HE
25 IS INTELLIGENT ENOUGH, HE MIGHT BE MORE TO THE
26 POINT AND SAY EITHER ONE OF TWO THINGS: 'IT
27 STIMULATES ME,' OR 'IT RELAXES ME.' AND NOW WE
28 ARE ALREADY DEEP INTO OUR TOPIC. THE POLARITY OF

1732

1 THESE TWO OBSERVATIONS HAS PLAGUED INVESTIGATORS
2 FOR 50 YEARS. THE CHALLENGE TO ANY THEORY AS TO
3 WHY PEOPLE SMOKE LIES IN THE THEORY'S ABILITY TO
4 RESOLVE THIS PARADOXICAL DUALITY OF EFFECT.
5 "THE ST. MARTIN CONFERENCE WAS CALLED BY THE
6 COUNCIL FOR TOBACCO RESEARCH U.S.A., IN AN EFFORT
7 TO GOAD THE SCIENTIFIC COMMUNITY INTO HAVING
8 ANOTHER GO AT THE PROBLEM. AND GO AT IT THEY
9 DID. MUCH OF WHAT FOLLOWS IN THIS PRESENTATION
10 COMES FROM THAT ST. MARTIN CONFERENCE.
11 "MOST OF THE CONFEREES WOULD AGREE WITH THIS
12 PROPOSITION: THE PRIMARY INCENTIVE TO CIGARETTE
13 SMOKING IS THE IMMEDIATE SALUTARY EFFECT OF
14 INHALED SMOKE UPON BODY FUNCTION. THIS IS NOT TO
15 SUGGEST THAT THIS EFFECT IS THE ONLY INCENTIVE.
16 CIGARETTE SMOKING IS SO PERVASIVE A LIFE STYLE
17 THAT IT IS INEVITABLE THAT OTHER SECONDARY
18 INCENTIVES SHOULD BECOME OPERATIVE. THE
19 CONFERENCE SUMMARIZER, PROFESSOR SEYMOUR KETY OF
20 HARVARD, USED EATING AS AN ANALOGY. ELABORATE
21 BEHAVIORAL RITUALS, TASTE PREFERENCES, AND SOCIAL
22 INSTITUTIONS HAVE BEEN BUILT AROUND THE ELEMENTAL
23 ACT OF EATING, TO SUCH AN EXTENT THAT WE FIND
24 PLEASURE IN EATING EVEN WHEN NOT HUNGRY.
25 "IT WOULD BE DIFFICULT FOR ANY OF US TO IMAGINE
26 THE FATE OF EATING, WERE THERE NOT EVER ANY
27 NUTRITIVE GAIN INVOLVED. IT WOULD BE EVEN MORE
28 PROVOCATIVE TO SPECULATE ABOUT THE FATE OF SEX

1733

1 WITHOUT ORGASM. I'D RATHER NOT THINK ABOUT IT.
2 "AS WITH EATING AND COPULATING, SO IT IS WITH
3 SMOKING. THE PHYSIOLOGICAL EFFECT SERVES AS THE
4 PRIMARY INCENTIVE; ALL OTHER INCENTIVES ARE
5 SECONDARY.
6 "THE MAJORITY OF THE CONFEREES WOULD GO EVEN
7 FURTHER AND ACCEPT THE PROPOSITION THAT NICOTINE
8 IS THE ACTIVE CONSTITUENT OF CIGARETTE SMOKE.
9 WITHOUT NICOTINE, THE ARGUMENT GOES, THERE WOULD
10 BE NO SMOKING. SOME STRONG EVIDENCE CAN BE
11 MARSHALLED TO SUPPORT THIS ARGUMENT:
12 1) NO ONE HAS EVER BECOME A CIGARETTE SMOKER BY
13 SMOKING CIGARETTES WITHOUT NICOTINE;
14 2) MOST OF THE PHYSIOLOGICAL RESPONSES TO
15 INHALED SMOKE HAVE BEEN SHOWN TO BE
16 NICOTINE-RELATED;
17 3) DESPITE MANY LOW NICOTINE BRAND ENTRIES INTO
18 THE MARKETPLACE, NONE OF THEM HAVE CAPTURED A
19 SUBSTANTIAL SEGMENT OF THE MARKET. IN FACT,
20 CRITICS OF THE INDUSTRY WOULD DO WELL TO REFLECT
21 UPON THE INDIFFERENCE OF THE CONSUMER TO THE

22 INDUSTRY'S EFFORTS TO SELL LOW-DELIVERY BRANDS.
23 94 PERCENT OF THE CIGARETTES SOLD IN THE U.S.
24 DELIVER MORE THAN ONE MILLIGRAM OF NICOTINE.
25 98.5 PERCENT DELIVER MORE THAN .9 MILLIGRAMS.
26 THE PHYSIOLOGICAL RESPONSE TO NICOTINE CAN
27 READILY BE ELICITED BY CIGARETTES DELIVERING IN
28 THE RANGE OF ONE MILLIGRAM OF NICOTINE.

1734

1 "I HOPE OUR ENGLISH FRIENDS WHO ARE DEVELOPING
2 THE SYNTHETIC NICOTINELESS CIGARETTE ARE NOT
3 GOING TO BE TOO DISTURBED BY ALL OF THIS.
4 "WHY THEN IS THERE NOT A MARKET FOR NICOTINE PER
5 SE, TO BE EATEN, SUCKED, DRUNK, INJECTED,
6 INSERTED OR INHALED AS A PURE AEROSOL? THE
7 ANSWER, AND I FEEL QUITE STRONGLY ABOUT THIS, IS
8 THAT THE CIGARETTE IS IN FACT AMONG THE MOST
9 AWE-INSPIRING EXAMPLES OF THE INGENUITY OF MAN.
10 LET ME EXPLAIN MY CONVICTION.
11 "THE CIGARETTE SHOULD BE CONCEIVED NOT AS A
12 PRODUCT BUT AS A PACKAGE. THE PRODUCT IS
13 NICOTINE. THE CIGARETTE IS BUT ONE OF THE MANY
14 PACKAGE LAYERS. THERE IS THE CARTON, WHICH
15 CONTAINS THE PACK, WHICH CONTAINS THE CIGARETTE,
16 WHICH CONTAINS THE SMOKE. THE SMOKE IS THE FINAL
17 PACKAGE. THE SMOKER MUST STRIP OFF ALL THESE
18 PACKAGE LAYERS TO GET TO THAT WHICH HE SEEKS.
19 "BUT CONSIDER FOR A MOMENT WHAT 200 YEARS OF
20 TRIAL AND ERROR DESIGNING HAS BROUGHT IN THE WAY
21 OF NICOTINE PACKAGING:
22 "THINK OF THE CIGARETTE PACK AS A STORAGE
23 CONTAINER FOR A DAY'S SUPPLY OF NICOTINE:
24 1) IT IS UNOBTRUSIVELY PORTABLE.
25 2) ITS CONTENTS ARE INSTANTLY ACCESSIBLE.
26 "THINK OF THE CIGARETTE AS A DISPENSER FOR A
27 DOSE UNIT OF NICOTINE:
28 1) IT IS READILY PREPPED FOR DISPENSING

1735

1 NICOTINE.
2 2. ITS RATE OF COMBUSTION METERS THE DISPENSING
3 RATE, SETTING AN UPPER SAFE LIMIT FOR A SUBSTANCE
4 THAT CAN BE TOXIC IN LARGE DOSES.
5 3) DISPENSING IS UNOBTRUSIVE TO MOST ONGOING
6 BEHAVIOR.
7 "THINK OF A PUFF OF SMOKE AS THE VEHICLE OF
8 NICOTINE:
9 1) A CONVENIENT 35 CC MOUTHFUL CONTAINS
10 APPROXIMATELY THE RIGHT AMOUNT OF NICOTINE.
11 2) THE SMOKER HAS WIDE LATITUDE IN FURTHER
12 CALIBRATION: PUFF VOLUME, PUFF INTERVAL, DEPTH
13 AND DURATION OF INHALATION. WE HAVE RECORDED
14 WIDE VARIABILITY IN INTAKE AMONGST SMOKERS.
15 AMONG A GROUP OF PACK-A-DAY SMOKERS, SOME WILL
16 TAKE IN LESS THAN THE AVERAGE HALF-PACK SMOKER,
17 SOME WILL TAKE IN MORE THAN THE AVERAGE TWO
18 PACK-A-DAY SMOKER.
19 3) HIGHLY ABSORBABLE: 97 PERCENT NICOTINE
20 RETENTION.
21 4) RAPID TRANSFER: NICOTINE DELIVERED TO
22 BLOODSTREAM IN ONE TO THREE MINUTES.
23 5) NONNOXIOUS ADMINISTRATION.
24 "SMOKING IS BEYOND QUESTION THE MOST OPTIMIZED
25 VEHICLE OF NICOTINE AND THE CIGARETTE THE MOST
26 OPTIMIZED DISPENSER OF SMOKE.

27 "LEST ANYONE BE MADE UNDULY APPREHENSIVE ABOUT
28 THIS DRUGLIKE CONCEPTUALIZATION OF THE CIGARETTE,

1736

1 LET ME HASTEN TO POINT OUT THAT THERE ARE MANY
2 OTHER VEHICLES OF SOUGHT-AFTER AGENTS WHICH
3 DISPENSE IN DOSE UNITS: WINE IS THE VEHICLE AND
4 DISPENSER OF ALCOHOL, TEA AND COFFEE ARE THE
5 VEHICLES AND DISPENSERS OF CAFFEINE, MATCHES
6 DISPENSE DOSE UNITS OF HEAT, AND MONEY IS THE
7 STORAGE CONTAINER, VEHICLE AND DOSE-DISPENSER OF
8 MANY THINGS.

9 "SO MUCH FOR EXTOLLING THE VIRTUES OF THE ROD.

10 LET US GO BACK NOW AND PICK UP OUR DISCUSSION OF THE
11 MOTIVATIONAL ASPECTS OF SMOKING. IF WE ACCEPT THE PREMISE
12 THAT NICOTINE IS WHAT THE SMOKER SEEKS, WE'VE STILL NOT
13 ANSWERED THE QUESTION 'WHY DO PEOPLE SMOKE?' WE'VE MERELY
14 REFORMULATED IT TO READ 'WHY DOES THE SMOKER TAKE NICOTINE
15 INTO HIS SYSTEM?"

16 "SYSTEMATIC RESEARCH ON THE QUESTION DATES BACK
17 SOME 50 YEARS TO THE TIME WHEN AMERICAN TOBACCO
18 COMPANY FUNDED THE WORK OF A PSYCHOLOGIST LATER
19 TO BECOME THE MOST PROMINENT AMERICAN
20 PSYCHOLOGIST OF HIS TIME. HIS NAME WAS CLARK L.
21 HULL. HIS QUESTION THEN WAS 'WHEREIN LIES THE
22 CHARM OF TOBACCO FOR THOSE ACCUSTOMED TO ITS
23 USE?"

24 AND FOR THE RECORD, I'VE READ UP THROUGH THE
25 BEGINNING OF PAGE 7. SKIPPING OVER TO PAGE 10.

26 "THE PHARMACOLOGISTS AND PSYCHOLOGISTS HAVE DONE
27 MUCH BETTER" --

28 MR. HARDY: "PHYSIOLOGISTS."

1737

1 MS. CHABER: -- "PHYSIOLOGISTS HAVE DONE MUCH
2 BETTER, WHICH LEADS US TO THE SECOND BODY OF
3 FACT; THE HUMAN PHYSIOLOGICAL RESPONSE TO SMOKE.
4 THE LIST IN TABLE 2 AGAIN IS A SUMMARY OF OUR
5 KNOWLEDGE. TO BE SURE, THERE ARE OTHER RESPONSES,
6 SOME OF WHICH HAVE BEEN NOTED IN THE LITERATURE,
7 SOME LIKELY YET TO BE DISCOVERED, BUT THOSE
8 LISTED HAVE BEEN REPORTED BY AT LEAST TWO
9 NONRELATED LABORATORIES.

10 "TABLE 2. TRANSIENT PHYSIOLOGICAL RESPONSES TO
11 SMOKE INHALATION.

- 12 1) ELEVATED HEART RATE;
- 13 2) ELEVATED CORONARY FLOW;
- 14 3) ELEVATED BLOOD SUGAR LEVEL;
- 15 4) LOWERED CUTANEOUS TEMPERATURE IN THE
- 16 EXTREMITIES;
- 17 5) INCREASED BLOOD FLOW IN SKELETAL MUSCULATURE;
- 18 6) A REACTIVE RELEASE OF ADRENALINE;
- 19 7) ALTERATIONS IN ELECTRICAL POTENTIAL PATTERNS
- 20 OF THE BRAIN INVOLVING ALPHA WAVE SUPPRESSION;.
- 21 8) INHIBITION OF PATELLAR REFLEX.

22 "WHERE THESE RESPONSES HAVE BEEN PLOTTED OVER
23 TIME, THEY HAVE BEEN OBSERVED TO HAVE THEIR ONSET
24 WITHIN SEVERAL MINUTES OF SMOKE INHALATION, AND
25 THEY ARE SHORT-LIVED, HAVING A DECAY FUNCTION
26 WITH A HALF-LIFE OF ABOUT 30 MINUTES. ONSET AND
27 DECAY ROUGHLY PARALLEL THE COINCIDENT PLOTTING OF
28 NICOTINE IN THE BLOODSTREAM."

1738

1 THAT'S THE END OF THE READING OF THAT PORTION OF
2 THE DOCUMENT. I HAVE NOT READ THE ENTIRE DOCUMENT.

3 MS. MASON: YOUR HONOR, I'D JUST LIKE TO READ
4 THE LAST PARAGRAPH, FOR COMPLETENESS.
5 THE COURT: YOU MAY.
6 MS. CHABER: MAY I LOOK AT IT?
7 MS. MASON: THE VERY LAST PARAGRAPH.
8 MS. CHABER: FINE.
9 MS. MASON: "THIS IS THE END OF MY
10 PRESENTATION. IF YOU HAVE BEEN INTRIGUED BY ANY
11 OF THESE IDEAS, I RECOMMEND THE RECENTLY
12 PUBLISHED VOLUME ENTITLED 'SMOKING BEHAVIOR:
13 MOTIVES AND INCENTIVES,' A COMPENDIUM OF PAPERS
14 PRESENTED AT THE ST. MARTIN CONFERENCE, PUBLISHED
15 BY V.H. WINSTON & SONS OF WASHINGTON, D.C."
16 MS. CHABER: AND YOUR HONOR, WE HAVE A WITNESS
17 THAT WE --
18 THE COURT: YOU HAVE WHAT?
19 MS. CHABER: A WITNESS, UNLESS THE COURT WANTS
20 TO TAKE THE BREAK FIRST, AND THEN WE COULD PUT THE WITNESS
21 ON AFTER.
22 THE COURT: IS THIS GOING TO COMPLETE THE
23 READING FOR THE DAY?
24 MS. CHABER: I THINK, IN THE INTEREST OF HAVING
25 A WITNESS GET ON, YES, YOUR HONOR.
26 THE COURT: THAT'S FINE.
27 WELL, LET'S GO FOR 15 OR 20 MORE MINUTES AND THEN
28 TAKE THE RECESS, SO WE JUST HAVE EQUAL SEGMENTS IN THE
1739 AFTERNOON.
1 LET'S JUST GO FOR A FEW MORE MINUTES.
2 MS. CHABER: OKAY.
3 THE COURT: WE'VE BEEN HERE ONLY FOR A LITTLE
4 OVER AN HOUR.
5 MS. CHABER: THAT'S FINE WITH ME.
6 THE COURT: OKAY. WHAT IS THE NAME OF THE
7 WITNESS?
8 MS. CHABER: WELL, I'M NOT SURE WHICH OF THE
9 TWO. THERE'S TWO WAITING.
10 THE COURT: WHY DON'T YOU GO CHECK AND COME BACK
11 AND TELL US.
12 MS. CHABER: TROY WHITTEKER.
13 THE COURT: OKAY.
14 THE CLERK: PLEASE COME FORWARD.
15 PLEASE STAND RIGHT HERE AND RAISE YOUR RIGHT
16 HAND. THIS WAY, PLEASE.
17
18 TESTIMONY OF
19 TROY WHITTEKER,
20 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
21 DULY SWORN, TESTIFIED AS FOLLOWS:
22 THE CLERK: PLEASE STATE YOUR NAME.
23 THE WITNESS: TROY WHITTEKER.
24 THE CLERK: PLEASE SPELL YOUR NAME.
25 THE WITNESS: T-R-O-Y W-H-I-T-T-E-K-E-R.
26 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
27 THE COURT: YOU MAY PROCEED.
28
1740
1 DIRECT EXAMINATION
2 BY MR. BROWN: Q. MR. WHITTEKER, CAN YOU HEAR
3 ME OKAY?
4 A. YES, I CAN.
5 Q. ALL RIGHT. NOW, MR. WHITTEKER, YOU HAVE A
6 HEARING PROBLEM IN YOUR RIGHT EAR, IS IT?
7 A. YES.

8 Q. SO IF YOU CAN KIND OF TILT YOUR HEAD A LITTLE
9 BIT. AND IF YOU DON'T HEAR OR IF YOU HAVE A PROBLEM
10 UNDERSTANDING MYSELF OR ANYONE ELSE, ANY OF THE OTHER
11 LAWYERS' QUESTIONS, BE SURE YOU TELL US. OKAY?
12 A. YES, I WILL.
13 Q. ALL RIGHT. MR. WHITTEKER, FIRST OF ALL, YOU ARE
14 THE FATHER OF THE PLAINTIFF, LESLIE WHITELEY, IN THIS CASE?
15 A. YES, I AM.
16 Q. ALL RIGHT. NOW, LET ME -- I'M GOING TO GET INTO
17 YOUR LIFE A LITTLE BIT, AND THEN INTO YOUR FAMILY'S LIFE AND
18 LESLIE WHITELEY.
19 LET'S START WITH YOU. FIRST OF ALL, WHERE WERE
20 YOU BORN? WHERE DID YOU GROW UP?
21 A. I WAS BORN IN BENGAL, OKLAHOMA. AT THE END OF
22 FOUR YEARS, MY FOLKS MOVED TO MISSOURI. AND I LIVED THERE
23 UNTIL I JOINED THE NAVY IN 1941.
24 Q. AND DID YOU LIVE THEN IN EITHER IN OKLAHOMA OR
25 MISSOURI UNTIL WORLD WAR II STARTED?
26 A. YES.
27 Q. AND WHERE WERE YOU LIVING WHEN YOU JOINED THE
28 NAVY?
1741
1 A. I WAS IN THE CIVILIAN CONSERVATION CORPS IN
2 MOBERLY, MISSOURI.
3 Q. NOW, AS WE KNOW, WAR WORLD WAR II STARTED ON
4 DECEMBER 7TH, 1941.
5 WHAT WAS THE DATE YOU JOINED THE NAVY?
6 A. DECEMBER THE 8TH, 1941.
7 Q. AND WHERE DID YOU GO FOR YOUR BASIC TRAINING IN
8 THE NAVY?
9 A. SAN DIEGO NAVAL TRAINING STATION.
10 Q. AND WHEN YOU CAME OUT OF THE NAVAL TRAINING
11 CENTER, SAN DIEGO, WITHIN A SHORT TIME, WERE YOU ASSIGNED TO
12 SEA DUTY?
13 A. I WAS ASSIGNED AS GUN CREW ON A MERCHANT SHIP.
14 Q. AND WHERE DID YOU JOIN THAT CREW?
15 A. IN LONG BEACH.
16 Q. ALL RIGHT. DURING THE WAR, DID YOU SERVE ON MORE
17 THAN ONE MERCHANT CARRIER AS A GUNNER'S MATE OR AS PART OF A
18 GUN CREW?
19 A. YES, I DID. I THINK A TOTAL OF THREE.
20 Q. OKAY. AT SOME POINT DURING THE WAR, WERE YOU
21 TRANSFERRED TO A UNITED STATES DESTROYER?
22 A. YES.
23 Q. WHAT WAS THE NAME OF IT?
24 A. WE LEFT LONG BEACH, MADE A ROUND TRIP AND ENDED
25 UP IN NEW YORK BY THE WAY OF LIVERPOOL, ENGLAND.
26 Q. THIS WAS A MERCHANT SHIP?
27 A. YES. WHEN WE RETURNED TO NEW YORK, I WAS MADE
28 E-4, AT THAT TIME THIRD CLASS.
1742
1 THEY TRANSFERRED ME TO THE USS LAWS, DD-558.
2 Q. THAT WAS A UNITED STATES DESTROYER?
3 A. YES, SIR.
4 Q. AND WHERE WAS IT?
5 A. WE PICKED THE SHIP UP IN THE SHIPYARDS IN
6 SEATTLE.
7 Q. WAS IT A BRAND-NEW SHIP?
8 A. YES, SIR.
9 Q. AND AS I UNDERSTAND IT, YOU BECAME A PLANK OWNER;
10 IS THAT RIGHT?
11 A. YES.
12 Q. TELL US WHAT A PLANK OWNER IS OF THE USS LAWS.

13 A. A PLANK OWNER IS ONE WHO TAKES POSSESSION OF THE
14 SHIP OR IS ON THE CREW OF THE SHIP WHEN IT IS COMMISSIONED,
15 AND IS STILL ON THE SHIP WHEN IT'S DECOMMISSIONED.

16 Q. ALL RIGHT.

17 WHEN THE SHIP MOVED OUT OF SEATTLE, AWAY FROM THE
18 WEST COAST, WHERE DID YOU GO?

19 A. THROUGH THE SHIPYARD, THROUGH THE NAVY BASE IN
20 HAWAII. OUR FIRST ENCOUNTER WITH THE ENEMY WAS IN SAIPAN,
21 TINIAN, GUAM. ALL IN THE SAME AREA.

22 Q. NOW, BEFORE YOU GOT TO THE COMBAT ZONE WHERE
23 SAIPAN WAS LOCATED, HAD YOU EVER SMOKED IN YOUR LIFE?

24 A. NO.

25 Q. ALL RIGHT. NOW, DID YOU START TO SMOKE WHILE YOU
26 WERE IN THE NAVY?

27 A. YES.

28 Q. WHEN DID YOU START TO SMOKE?

1743

1 A. WHEN THEY ANNOUNCED THAT KAMIKAZES WERE COMING AT
2 US. I LOOKED UP AND THEY WERE COMING STRAIGHT DOWN AT US.
3 SOMEBODY HANDED ME A CIGARETTE, AND I DID.

4 Q. AND YOU STARTED RIGHT THEN?

5 A. YES, SIR.

6 Q. HAVE YOU EVER TESTIFIED IN A COURTROOM BEFORE?

7 A. NEVER TESTIFIED, NO, SIR.

8 Q. OKAY. SO ARE YOU A LITTLE BIT NERVOUS?

9 A. VERY.

10 Q. NOT AS BAD AT LOOKING AT KAMIKAZES COMING AT
11 YOU.

12 A. NO, SIR.

13 Q. CLOSE. OKAY. ALL RIGHT.

14 I THINK YOU MENTIONED ALREADY IN YOUR LAST ANSWER
15 YOUR SHIP WENT INTO COMBAT IN TINIAN, GUAM.

16 WHAT WAS YOUR LAST COMBAT OPERATION ABOARD THE
17 USS LAWS?

18 A. THE OKINAWA INVASION.

19 Q. AND WHAT YEAR WAS THE OKINAWA INVASION?

20 A. APRIL 1945.

21 Q. ALL RIGHT. NOW, AFTER YOU CAME OFF YOUR SHIP AND
22 YOU CAME OUT OF THE COMBAT ZONES, DID YOU CONTINUE TO SMOKE?

23 A. NO.

24 Q. HOW MUCH DID YOU SMOKE DURING THE TIME THAT YOU
25 WERE SMOKING, FROM ESSENTIALLY THE BATTLE OF SAIPAN THROUGH
26 THE END OF THE BATTLE OF OKINAWA?

27 A. PROBABLY LESS THAN SIX CIGARETTES A DAY.

28 Q. AND THAT WHOLE PERIOD I JUST MENTIONED, SAIPAN

1744

1 THROUGH OKINAWA, ABOUT HOW MANY YEARS WAS THAT?

2 A. TWO.

3 Q. ALL RIGHT.

4 SO BEFORE YOU GOT BACK TO THE UNITED STATES, YOU
5 WERE NO LONGER SMOKING?

6 A. NO, SIR.

7 Q. NOW, I'LL JUMP AHEAD A LITTLE BIT AND ASK YOU
8 THIS: DID YOU EVER START UP SMOKING AGAIN?

9 A. YES, I DID.

10 Q. AND ABOUT WHAT YEAR WAS THAT?

11 A. I BELIEVE IT WAS 1960.

12 Q. AND UNDER WHAT CIRCUMSTANCES DID YOU START TO
13 SMOKE AGAIN?

14 A. I WAS ELECTED BUSINESS AGENT TO THE PLUMBERS,
15 PIPEFITTERS UNION. IT'S A VERY STRESSFUL JOB.

16 Q. SO YOU STARTED TO SMOKE?

17 A. YES, SIR.

18 Q. AND THEN, HOW LONG DID YOU SMOKE BEFORE YOU QUIT,
19 IF YOU DID?
20 A. ABOUT TWO YEARS.
21 Q. SO YOU QUIT IN WHAT, ABOUT 1963?
22 A. I THINK THAT WAS RIGHT.
23 Q. CAN YOU PINPOINT THAT TO A YEAR WHEN ONE OF YOUR
24 CHILDREN WERE BORN?
25 A. I BELIEVE IT WAS OUR LAST ONE. IT WAS DAVID.
26 AND MY WIFE OBJECTED TO ME SMOKING. THAT CAUSED
27 HER NAUSEA.
28 Q. SO YOU STOPPED?
1745
1 A. I DID.
2 Q. DID YOU FEEL ANY ILL EFFECTS FROM STOPPING?
3 A. NO, SIR.
4 Q. NOW, LET'S JUMP BACKWARDS AGAIN.
5 WHEN DID YOU FIRST MEET YOUR WIFE? YOU DON'T
6 HAVE TO GIVE US THE DAY. THE YEAR WOULD BE OKAY.
7 A. 1940 -- I BELIEVE IT WAS THE FALL OF '42.
8 Q. AND YOU WERE ASSIGNED TO THE USS LAWS AT THE
9 TIME?
10 A. NO, SIR. I WAS ASSIGNED TO A MERCHANT SHIP.
11 Q. ALL RIGHT. WHERE DID YOU MEET HER?
12 A. VENTURA, AT A SKATING RING.
13 Q. WHY DID YOU HAPPEN TO BE IN VENTURA?
14 A. I GOT WAYLAID BY A YOUNG MAN THAT SAID HE
15 COULDN'T GO OVER FROM PORT HUENEME -- COULDN'T GO TO A
16 SKATING RINK UNLESS THERE WAS AN ADULT WITH HIM.
17 AND I LET HIM TALK ME INTO GOING, AND HE
18 DISAPPEARED.
19 Q. WERE YOU ON A NAVY SHIP, ON A SHIP THAT WAS
20 NEARBY?
21 A. YES. IT WAS PORT HUENEME.
22 Q. AND THAT'S WHERE --
23 A. APPROXIMATELY 15 MILES FROM VENTURA.
24 Q. OKAY. IT WOULD BE BETTER IF YOU LET ME FINISH MY
25 QUESTION.
26 A. SORRY.
27 Q. BECAUSE THIS LADY DOWN HERE WILL GET UPSET WITH
28 BOTH OF US IF SHE HAS TO TAKE US BOTH AT ONCE. ALL RIGHT.
1746
1 SO EVENTUALLY, YOU MARRIED HER.
2 AND WHEN DID THAT HAPPEN?
3 A. WHEN I RETURNED IN 1945.
4 Q. OKAY. AND WHERE DID YOU GET MARRIED?
5 A. IN VENTURA.
6 Q. WHAT IS YOUR WIFE'S NAME?
7 A. PATTY RAE.
8 Q. STILL MARRIED TO HER?
9 A. YES.
10 Q. YOU AND SHE HAD SOME CHILDREN.
11 HOW MANY CHILDREN DID YOU HAVE?
12 A. SIX.
13 Q. ALL RIGHT.
14 DO YOU REMEMBER ABOUT WHEN THE FIRST CHILD WAS
15 BORN, THE YEAR?
16 A. '47.
17 Q. AND WHO WOULD THAT BE? WHAT WAS THE NAME OF THAT
18 CHILD?
19 A. MICHAEL.
20 Q. THAT'S MICHAEL. ALL RIGHT.
21 WHEN THE WAR WAS OVER IN 1945, DID YOU STAY IN
22 THE NAVY?

23 A. YES, SIR.
24 Q. WERE YOU STILL ON THE USS LAWS?
25 A. NO, I WAS ASSIGNED TO THE 9TH NAVAL DISTRICT
26 SHORE PATROL IN CHICAGO.
27 Q. WAS THE USS LAWS DECOMMISSIONED?
28 A. YES, IT WAS.
1747
1 Q. THAT'S WHY YOU BECAME --
2 A. A PLANK OWNER.
3 Q. -- A PLANK OWNER, BECAUSE YOU WERE ON HER FROM
4 THE FIRST DAY TO THE LAST DAY?
5 A. YES, SIR.
6 Q. NOW, EVENTUALLY, YOU GOT OUT OF THE NAVY.
7 TELL US WHEN THAT WAS. I MEAN, OUT OF ACTIVE
8 DUTY.
9 A. JULY OF '47.
10 Q. OKAY. THE SAME YEAR THAT MICHAEL WAS BORN?
11 A. YES.
12 Q. OKAY. WHEN YOU GOT OUT, WHAT DID YOU --
13 A. I BECAME --
14 Q. -- DO THEN?
15 A. EXCUSE ME.
16 Q. I'M SORRY. GO AHEAD.
17 A. I BECAME AN APPRENTICE PLUMBER.
18 Q. TELL US WHAT THAT MEANS.
19 WHAT IS AN APPRENTICE PLUMBER?
20 A. AN APPRENTICE IS YOU'RE ASSIGNED TO THE MENIAL
21 TASKS OF THE PLUMBING, AND TO LEARN WHAT A JOURNEYMAN DOES
22 AND HOW TO DO IT AND NOT TO DO IT.
23 Q. AN APPRENTICE PLUMBER IS IN TRAINING TO BECOME A
24 JOURNEYMAN?
25 A. THAT'S RIGHT.
26 Q. HOW LONG DOES IT TAKE TO BECOME A JOURNEYMAN?
27 A. AT THAT TIME, IT WAS FIVE YEARS.
28 Q. DID YOU EVENTUALLY BECOME A JOURNEYMAN?
1748
1 A. YES, I DID.
2 Q. BEFORE THAT HAPPENED, YOU WENT BACK IN THE NAVY,
3 DIDN'T YOU?
4 A. YES. I WAS RECALLED IN 1952.
5 Q. THAT WAS DURING THE KOREAN WAR?
6 A. YES, SIR.
7 Q. HOW LONG DID YOU SERVE IN THE NAVY THAT TIME?
8 A. ONE YEAR.
9 Q. AND YOU GOT OUT IN WHAT YEAR?
10 A. '53.
11 Q. DID YOU GO BACK TO BEING A PLUMBER?
12 A. YES, I DID.
13 Q. WERE YOU ALSO CONSIDERED A PIPEFITTER?
14 A. YES.
15 Q. WHAT'S THE DIFFERENCE BETWEEN A PLUMBER AND A
16 PIPEFITTER?
17 A. FIGURATIVELY SPEAKING, A PLUMBER DOES HOUSING.
18 THE PIPEFITTER DOES COMMERCIAL, INDUSTRIAL.
19 Q. LET ME ASK YOU SOME QUESTIONS TO CATCH UP ON
20 THESE SIX CHILDREN.
21 YOU TOLD US YOUR FIRST, MICHAEL, WAS BORN IN
22 1947, THE YEAR YOU GOT OUT OF THE NAVY, ACTIVE DUTY, THE
23 FIRST TIME.
24 WHAT WAS -- WHO WAS THE NEXT CHILD TO COME
25 ALONG?
26 I'M NOT ASKING FOR DETAILS.
27 A. YOU SHOULD BE ASKING MY WIFE, NOT ME.

28 Q. I WILL ASK HER.
1749
1 A. I THINK IT WAS SIX YEARS.
2 Q. I DIDN'T ASK THE TIME, JUST WHAT WAS THE NAME OF
3 THE NEXT CHILD?
4 A. OH, CHRISTINE.
5 Q. NOW, SEE, YOU DIDN'T HEAR MY QUESTION, SO BE SURE
6 YOU TELL ME.
7 A. I WAS THINKING, NOT LISTENING.
8 Q. ALL RIGHT. NOT A GOOD IDEA WHEN YOU'RE SITTING
9 UP THERE. OKAY.
10 THE THIRD CHILD WAS WHO? YOU HAD MICHAEL, YOU
11 HAD CHRISTINE. WHO WAS NEXT?
12 A. REBECCA LEE.
13 Q. YOU CALL HER BECKY?
14 A. YES.
15 Q. AND THEN, WHO WAS YOUR FOURTH CHILD?
16 A. KENNETH RAYMOND. WE CALL HIM KEN.
17 Q. AND WHO WAS NEXT?
18 A. LESLIE.
19 Q. AND WHEN WAS SHE BORN; THE YEAR?
20 A. I CAN'T ANSWER THAT TRUTHFULLY.
21 Q. ALL RIGHT. LET ME ASK YOU --
22 A. I'M JUST THE FATHER.
23 Q. WHO KEEPS TRACK OF BIRTHDAYS?
24 A. MY WIFE.
25 Q. THAT'S WHAT I THOUGHT YOU'D SAY. OKAY.
26 LET'S SEE IF WE CAN RELATE IT TO SOMETHING.
27 WHAT WAS GOING ON IN YOUR LIFE ABOUT THE TIME
28 LESLIE WHITTEKER -- NOW LESLIE WHITELEY, THEN LESLIE
1750
1 WHITTEKER -- WAS BORN?
2 IN YOUR JOB; WHAT WERE YOU DOING IN YOUR JOB?
3 A. I'M NOT CERTAIN.
4 Q. LET ME DO THIS. LET ME TAKE YOU BACK TO WHAT YOU
5 WERE DOING GENERALLY BETWEEN 1953, THE YEAR YOU GOT OUT OF
6 THE NAVY, THE KOREAN WAR ERA, UP UNTIL YOU BECOME -- AND YOU
7 DID BECOME A BUSINESS AGENT AT SOME POINT; CORRECT?
8 A. YES, I DID.
9 Q. OKAY. WE'LL WORK UP TO THAT.
10 WHAT WAS YOUR OCCUPATION DURING THOSE YEARS, 1953
11 THROUGH THE TIME YOU BECAME A BUSINESS AGENT?
12 A. MY OCCUPATION WAS STILL THE SAME. I WAS A
13 PLUMBER OR A PIPEFITTER, WHATEVER JOB I WOULD HAPPEN TO GO
14 TO.
15 Q. GIVE ME -- OR TELL US WHAT THE KIND OF JOBS WERE
16 IN THAT TIME FRAME, 1953, UNTIL THE BUSINESS AGENT TIME,
17 THAT YOU WORKED ON, THE TYPES OF JOBS.
18 A. HOUSING MOSTLY, AND SOME INDUSTRIAL. AND I DON'T
19 KNOW WHAT YOU CALL A STEAM PLANT, BUT IT'S -- WE BUILT ONE.
20 Q. OKAY. DURING MOST OF THAT TIME, WERE YOU A
21 JOURNEYMAN OR WERE YOU SOMETHING ELSE?
22 A. BOTH. JOURNEYMAN PART OF THE TIME, AND I WAS
23 FOREMAN OR GENERAL FOREMAN OR SUPERINTENDENT.
24 Q. DID YOU JUST MENTION A STEAM PLANT THAT YOU
25 WORKED ON?
26 A. YES, I DID. MANDALAY BEACH STEAM PLANT.
27 Q. WHERE IS THAT?
28 A. IT'S APPROXIMATELY HALFWAY BETWEEN VENTURA AND
1751
1 OXNARD.
2 Q. AT THE TIME, DID YOU LIVE FAR FROM THERE?
3 A. IN VENTURA.

4 Q. SO IT'S ABOUT HOW MANY MILES FROM YOUR HOME DOWN
5 TO THE SHIPYARD -- I MEAN, TO THE PLANT?
6 A. AT THE TIME, IT WAS ABOUT 20 MILES. WE HAD -- WE
7 HAD TO GO WAY AROUND TO GET THERE. THERE WAS NO ROADS TO
8 IT.
9 Q. WHAT YEARS DID YOU WORK THERE?
10 A. I BELIEVE IT WAS '50 -- STARTED IN '58, '59 AND
11 PART OF '60.
12 Q. ALL RIGHT. AND IN THE FUTURE HERE, IN YOUR
13 TESTIMONY, IF YOU HAVE A PROBLEM REMEMBERING A DATE ABOUT
14 WHEN YOU DID A CERTAIN THING, WOULD IT HELP YOUR MEMORY IF
15 YOU LOOKED AT YOUR SOCIAL SECURITY RECORDS?
16 A. YES, IT WOULD.
17 Q. SO WHEN WE GET TO A PROBLEM LIKE THAT, WE'LL
18 REFRESH YOUR MEMORY WITH THAT. ALL RIGHT.
19 NOW, HOW MANY YEARS DID YOU SAY YOU WORKED AT
20 MANDALAY?
21 A. TWO YEARS.
22 Q. AND WHAT WERE THEY DOING AT THE MANDALAY PLANT AT
23 THAT POINT?
24 A. WE INSTALLED STEAMS LINES, AIR LINES, WATER LINES
25 AND FUEL LINES.
26 Q. I HAD A MORE GENERAL QUESTION.
27 WAS THE PLANT BEING CONSTRUCTED, NEWLY
28 CONSTRUCTED?
1752
1 A. IT WAS UNDER CONSTRUCTION, YES, WHEN I WENT.
2 Q. YOUR PART OF IT WAS TO DO THE THINGS YOU JUST
3 MENTIONED?
4 A. YES, SIR.
5 Q. OKAY. WHAT WAS YOUR TITLE AT THAT TIME?
6 A. I WAS THE FOREMAN, PIPEFITTER FOREMAN.
7 Q. HOW MANY PEOPLE --
8 A. 12.
9 Q. -- WERE IN YOUR CREW?
10 A. 12. EXCUSE ME.
11 Q. DID IT EVERY VARY?
12 A. SIR?
13 Q. YOU HAD A 12-MAN CREW?
14 A. YES, SIR.
15 Q. ALL RIGHT. AND TELL US WHAT YOUR CREW WAS
16 DOING.
17 A. PART OF THEM WERE JOURNEYMEN, HELPING THE
18 WELDER. AND THE WELDER, OF COURSE, WAS WELDING.
19 WE HAD ALL TYPES OF PIPE. WE ALSO DID STRESS
20 RELIEVING.
21 Q. LET ME INTERRUPT A LITTLE BIT. WE'LL WORK
22 BACKWARDS, BECAUSE A LOT OF THE PHRASES THAT YOU'RE GOING TO
23 USE AND HAVE USED ARE GOING TO BE A MYSTERY TO PEOPLE WHO
24 ARE NOT INVOLVED IN THE CONSTRUCTION TRADES. SO LET ME
25 START WITH THIS.
26 LET'S FIND OUT WHAT THE PLANT WAS ALL ABOUT.
27 WHAT WAS THE PURPOSE OF THE MANDALAY STREAM PLANT? WHAT DID
28 IT DO?
1753
1 A. STEAM-GENERATING PLANT, TO GENERATE ELECTRICITY.
2 Q. WHAT KIND OF FUEL DID IT USE TO DO THAT?
3 A. IT CAN EITHER USE GAS OR OIL.
4 Q. AND IS THE IDEA THAT IT HEATS WATER AND CREATES
5 STEAM?
6 A. SIR.
7 Q. IT HEATS WATER, WHICH TURNS TO STEAM?
8 A. YES.

9 Q. ALL RIGHT. HOW DOES IT HEAT THE WATER?
10 A. A STEAM PLANT IS REALLY A BIG BOX WITH TUBES ALL
11 THE WAY AROUND IT. THAT IS THE OUTSIDE OF THE BOX. THERE
12 ARE USUALLY FOUR STACKS OF BURNERS ON EACH SIDE, A TOTAL OF
13 16. AND THEY'RE USUALLY FOUR-FOOT DIAMETER, FED WITH EITHER
14 OIL OR GAS, WHATEVER THEY HAPPEN TO BE USING.
15 AND THAT UNDER HIGH PRESSURE, WATER WAS PIPED
16 INSIDE THE BOILER, LIT, AND IT HEATED THE STEAM, HEATED THE
17 WATER THAT WAS IN THE PIPES AROUND IT.
18 AND THAT IN TURN WENT INTO THE STEAM LINES AND
19 TURNED THE TURBINE, THE WHEELS IN THE TURBINE AND THAT
20 GENERATES THE ELECTRICITY.
21 MR. BROWN: NOW, WAIT JUST A MOMENT HERE. I
22 WILL SHOW YOU SOMETHING THAT MAY HELP.
23 WE HAVE A SET -- I'VE GIVEN A SET TO THE
24 DEFENDANTS. I HAVE A SET HERE PUNCHED FOR YOUR HONOR AND
25 ONE FOR THE CLERK.
26 MARK IT NEXT IN ORDER, WHICH WOULD BE?
27 THE CLERK: PLAINTIFFS' EXHIBIT 1852.
28 MR. BROWN: IT SHOULD BE A GROUP EXHIBIT, ONE,
1754
1 TWO, THREE, FOUR, FIVE PHOTOGRAPHS.
2 LET THE RECORD SHOW IT'S OF THE ORMOND BEACH
3 POWER PLANT, WHICH IS UP THE BEACH A LITTLE BIT. WE'LL
4 CONNECT IT TO MANDALAY.
5 THE COURT: WHY DON'T WE MARK THEM 1852-A
6 THROUGH E.
7 MR. BROWN: THAT WOULD BE FINE. THEY ARE IN
8 ORDER. EVERYBODY HAS GOT THEM IN THE SAME ORDER.
9 THE COURT: OKAY.
10 (PHOTOGRAPHS MORE PARTICULARLY
11 LISTED IN THE INDEX MARKED
12 FOR IDENTIFICATION PLAINTIFFS'
13 EXHIBIT #S 852-A THROUGH E)
14 MR. BROWN: Q. MR. WHITTEKER, I'M GOING TO
15 HAND YOU WHAT'S BEEN MARKED 1852-A THROUGH E, AND ASK YOU
16 SOME QUESTIONS ABOUT THEM.
17 FIRST OF ALL, THEY SHOW WHAT POWER PLANT?
18 A. REPEAT, PLEASE.
19 Q. WHICH POWER PLANT DO THESE PICTURES SHOW?
20 A. THIS IS ORMOND.
21 Q. DID YOU LATER ON WORK AT ORMOND BEACH?
22 A. YES, I DID.
23 Q. WHERE IS THAT LOCATED FROM MANDALAY?
24 A. IT'S ABOUT 8 MILES SOUTHWEST OF MANDALAY.
25 Q. WHO ARE THE OWNERS OR THE OWNER OF ORMOND BEACH
26 AND MANDALAY?
27 A. SOUTHERN CALIFORNIA EDISON COMPANY.
28 Q. OKAY. AND WHEN DID YOU WORK AT ORMOND BEACH?
1755
1 A. I BELIEVE WE STARTED IN 1967 OR '68 THROUGH --
2 Q. IT MIGHT BE HELPFUL HERE TO SEE THE SOCIAL
3 SECURITY RECORDS.
4 A. YES, IT WOULD.
5 Q. LET ME GIVE YOU, FIRST, ONE THAT YOU PUT SOME
6 MARKS ON.
7 MS. MASON: MAY I SEE THAT, COUNSEL?
8 MR. BROWN: MAYBE WE SHOULD MARK THIS, BECAUSE
9 YOU PUT THE MARKS ON IT. THAT MIGHT BE A BETTER WAY TO DO
10 IT.
11 THE COURT: DO YOU WANT TO MARK THAT FOR
12 IDENTIFICATION, AS 1853 FOR IDENTIFICATION?
13 MR. BROWN: I WOULD DO THAT, YOUR HONOR.

14 THE COURT: OKAY. WE'LL DO THAT.
15 MR. BROWN: THAT WOULD BE --
16 THE CLERK: PLAINTIFFS EXHIBIT 1853.
17 (DOCUMENT MORE PARTICULARLY
18 LISTED IN THE INDEX MARKED
19 FOR IDENTIFICATION PLAINTIFFS'
20 EXHIBIT # 1853)
21 MR. BROWN: I HAVE ONE FOR THE COURT, I THINK.
22 I BETTER. I MARKED UP THE ONE THAT HAS THE HOLES IN IT.
23 THE COURT: UNLESS IT MATTERS TO YOU, I DON'T
24 CARE IF IT'S MARKED UP OR NOT. IF NOBODY OBJECTS, I'LL TAKE
25 A MARKED-UP COPY.
26 MR. BROWN: OKAY. HE MARKED IT UP SO HE COULD
27 FIND SOME STUFF.
28 THE COURT: WELL, THEN, IF YOU WANT TO SHOW
1756
1 HIM -- ARE YOU GOING TO SHOW HIM THE MARKED-UP COPY, THE ONE
2 THAT HAS BEEN MARKED FOR IDENTIFICATION?
3 MR. BROWN: BOTH, BECAUSE WE MARKED THAT ONE.
4 THE COURT: BUT COUNSEL ARE ENTITLED TO SEE THE
5 MARKED-UP COPY.
6 MR. BROWN: SURE. YOU'RE RIGHT. I APOLOGIZE
7 FOR THAT.
8 I GUESS I'LL HAVE TO PUT THE SAME MARKS FOR YOU.
9 THE COURT: LET ME ASK THE DEFENSE, DO YOU WANT
10 TO HAVE THE MARKED-UP COPY MARKED FOR IDENTIFICATION OR IS
11 IT ENOUGH THAT THE OTHER COPY IS MARKED?
12 MR. ESCHER: YOUR HONOR, IT'S NOT NECESSARY TO
13 MARK THE MARKED-UP ONE FOR IDENTIFICATION. HE'S REALLY JUST
14 USING IT TO REFRESH HIS RECOLLECTION.
15 THE COURT: THAT'S FINE. THEN IF YOU WOULD
16 GIVE ME, IF YOU HAVE IT, AN UNMARKED COPY. THAT'S ALL I
17 NEED, BECAUSE THAT'S ALL THAT'S BEEN MARKED FOR
18 IDENTIFICATION. AND THE DEFENSE ISN'T ASKING FOR THAT TO BE
19 MARKED.
20 MR. BROWN: THAT DOESN'T HAVE HOLES PUNCHED.
21 THE COURT: TATSUO WILL DO IT THIS TIME.
22 MR. BROWN: DID I GIVE YOU A COPY?
23 THE WITNESS: NOT YET.
24 THE COURT: EVERYBODY ELSE IN THE ROOM HAS ONE.
25 MR. BROWN: EVERYBODY ELSE'S MEMORY IS
26 REFRESHED.
27 Q. I'M TURNING TO THE PLACE WHERE YOU MARKED SOME
28 ITEMS THERE THAT REFRESH YOUR MEMORY AS TO THE PERIOD OF
1757
1 TIME WHEN YOU WORKED AT ORMOND BEACH.
2 A. NO, I'M SORRY, BUT THAT'S NOT QUITE RIGHT.
3 THE ONE THAT'S MARKED IS MARKED FROM SEQUOIA
4 VENTURES, WHICH HAPPENS TO BE BECHTEL CORPORATION.
5 Q. LET'S GO BACK THEN.
6 AS LONG AS YOU'VE GOT THAT IN FRONT OF YOU, FROM
7 YOUR SOCIAL SECURITY RECORDS, WHEN DID YOU WORK AT MANDALAY?
8 A. JULY-SEPTEMBER. BY SAYING "JULY-SEPTEMBER," THAT
9 IS THE QUARTER.
10 Q. RIGHT.
11 A. JULY-SEPTEMBER OF '57 THROUGH APRIL-JUNE OF '59.
12 Q. IN THOSE SAME RECORDS, CAN YOU FIND WHERE YOU
13 WORKED WHEN YOU WORKED AT ORMOND BEACH?
14 A. PAGE 8.
15 Q. ALL RIGHT. JUST TELL US WHEN. PAGE 8 IS FINE.
16 WHEN WERE YOUR DATES?
17 A. THE DATE WAS JULY-SEPTEMBER OF 1969 THROUGH
18 APRIL-JUNE OF '74.

19 Q. ALL RIGHT. THAT'S FINE. THAT'S ALL WE NEED FROM
20 THAT.
21 NOW, I'D LIKE YOU GO TO BACK TO THE PICTURES.
22 AND IF YOU TURN TO 18 -- WHAT IS THE NUMBER?
23 MS. CHABER: 52.
24 MR. BROWN: 1852-B.
25 Q. THIS IS KIND OF A LONG-RANGE SHOT OF SOMETHING
26 THERE.
27 COULD YOU TAKE A LOOK AT THAT.
28 A. YES.
1758
1 Q. AND WHAT IS THAT? WHAT DOES THAT SHOW?
2 A. THAT'S THE ORMOND BEACH STEAM PLANT.
3 Q. TAKEN FROM, ROUGHLY?
4 A. AT LONG-RANGE TO -- FROM THEIR ENTRANCE ROAD.
5 Q. WHAT ARE THOSE TWO STACKS THAT ARE GOING UP
6 THERE?
7 A. THOSE ARE THE -- THEY CALL THEM THE SMOKESTACKS
8 THAT CARRY THE RESIDUE, I SUPPOSE YOU'D CALL IT, FROM THE
9 BURNERS.
10 Q. ALL RIGHT. AND WHAT IS THAT STRUCTURE WE ARE
11 LOOKING AT THAT LOOKS LIKE IT'S RIGHT BEHIND THE STACKS?
12 A. THERE'S TWO UNITS THERE OF THE STEAM PLANT. THE
13 ONE ON THE LEFT IS UNIT 1 AND ON THE RIGHT IS UNIT 2.
14 Q. DID YOU WORK ON BOTH?
15 A. YES, I DID.
16 Q. ALL RIGHT. NOW, TURN TO C.
17 AND DOES THAT ACCURATELY SHOW THE ORMOND BEACH
18 STEAM PLANT UP CLOSE, SHOWING WHAT THE NATURE OF THE
19 STRUCTURE IS, WHERE THE BOILER IS CONTAINED?
20 A. YES, IT DOES.
21 Q. AND DOWN IN THE FOREGROUND, WHAT IS THAT?
22 A. YOU ARE LOOKING AT THE TURBINE.
23 Q. ALL RIGHT. LET ME ASK YOU THIS: THE MANDALAY
24 PLANT AND THE ORMOND BEACH PLANT, ARE THEY VERY SIMILAR IN
25 APPEARANCE?
26 A. YES, EXCEPT FOR THE FACT THAT THE ORMOND BEACH
27 PLANT HAS ABOUT FOUR OR FIVE TIMES LARGER OUTPUT.
28 Q. HOW ABOUT THE SIZE OF THE STRUCTURE WHERE THE
1759
1 BOILERS ARE?
2 A. SIMILAR.
3 Q. LET ME ASK YOU TO GIVE US SOME DIMENSIONS OF WHAT
4 WE ARE LOOKING AT HERE.
5 ON B, WHAT WE ARE LOOKING AT?
6 MR. BROWN: IS THERE ANY OBJECTION TO PUTTING
7 THIS IN EVIDENCE OR AT LEAST PUTTING IT ON THE OVERHEAD?
8 MS. MASON: I HAVE NO OBJECTION TO SHOWING IT,
9 SHOWING THE PICTURE.
10 THE COURT: DOES THAT COMMENT APPLY TO B AND C,
11 TO THE WHOLE GROUP.
12 MS. MASON: I HAVE NO OBJECTION TO ANY OF THEM
13 BEING SHOWN.
14 THE COURT: YOU MAY SHOW IT.
15 MR. BROWN: Q. WHILE WE'RE WAITING FOR THE
16 WARM-UP (REFERRING TO ELECTRONIC EQUIPMENT), LET ME ASK YOU
17 FOR THE DIMENSIONS.
18 THESE UNITS THAT WE ARE LOOKING AT AT ORMOND
19 BEACH, ABOUT HOW TALL ARE THOSE?
20 A. I BELIEVE IT'S 289 FEET. I'M TALKING ABOUT THE
21 BUILDING NOW, NOT THE STACK.
22 Q. THAT'S RIGHT.
23 A. 289 FEET.

24 Q. WHAT'S THE DIMENSIONS AROUND THE OUTSIDE?
25 A. I THINK THAT IT WAS ABOUT 200-FOOT -- SORRY. THE
26 FLASH DISTRACTED ME. IT'S ABOUT 200-FOOT LONG AND IT'S
27 ABOUT 100-FOOT DEEP.
28 Q. WHEN YOU'RE SAYING "289 FEET," YOU ARE SAYING
1760
1 FROM THE GROUND TO THE TOP OF THIS STRUCTURE (INDICATING)?
2 A. YES.
3 Q. AND THAT STRUCTURE IS A BIG BOILER?
4 A. YES. THERE'S A BIG BOILER ON EACH SIDE.
5 Q. AND THEN, THERE ARE TWO STACKS I REFERRED TO, OF
6 COURSE. ALL RIGHT.
7 LET ME ASK THIS: THE PIPES YOU WORKED ON, WERE
8 THEY CONTAINED GENERALLY IN THIS AREA HERE (INDICATING)?
9 I'M GOING TO MOVE IT UP SO I CAN SEE THE
10 GENERATOR DOWN IN FRONT. YOU'RE NOT GOING TO BE ABLE TO SEE
11 THE WHOLE HEIGHT OF THE BUILDING THE WAY I'M PUTTING IT ON
12 THERE.
13 THE TYPES OF PIPES THAT YOUR CREW WORKED ON AT
14 THE MANDALAY AND ORMOND BEACH PLANT, ARE THEY LOCATED IN A
15 STRUCTURE LIKE THAT (INDICATING)?
16 A. OUTSIDE AND INSIDE.
17 Q. AND THAT INCLUDES DOWN TO WHERE THE GENERATOR IS?
18 A. DOWN TO THE EDGE OF THE GENERATOR. AND ANOTHER
19 CONTRACTOR TOOK OVER FROM THERE.
20 Q. AND HOW MANY YEARS DID IT TAKE YOU AND YOUR CREW
21 TO DO THE PIPEFITTING WORK?
22 A. FIVE.
23 Q. AT MANDALAY BEACH?
24 A. AT MANDALAY BEACH WAS TWO.
25 Q. TWO YEARS. THAT WAS ON ONE UNIT?
26 A. ONE UNIT.
27 Q. THAT WAS BECAUSE THERE WAS SUFFICIENT PIPING IN
28 WHAT WE CAN SEE HERE PLUS THE UPPER STORIES THAT REQUIRED
1761
1 THOSE TWO YEARS?
2 A. YES. YOU CAN ONLY SEE ABOUT ONE -- PROBABLY
3 ONE-FIFTH OF THE PIPING THERE IN THAT PICTURE.
4 Q. NOW, WHAT ARE THESE PIPES THAT YOU WERE WORKING
5 ON DOING IN THESE TWO PLANTS? WHAT WAS THEIR PURPOSE?
6 A. CARRYING THE STEAM FROM THE BOILER TO THE
7 TURBINE, AND THEN THROUGH TO TURN THE TURBINE, TO GENERATE
8 ELECTRICITY.
9 AND THEN IT WAS RETURNED TO THE BOILER AS COOL --
10 AFTER IT'S COLD, IT COOLS ITSELF DOWN, GOES THROUGH A
11 COOLING PROCESS AND THROUGH WATER, AND IT'S RETURNED TO THE
12 BOILER TO BE REHEATED.
13 THE COURT: LET US KNOW -- I DON'T WANT TO
14 INTERRUPT. LET US KNOW WHEN YOU GET TO A LOGICAL POINT.
15 MR. BROWN: RIGHT NOW WOULD BE FINE.
16 THE COURT: JURORS, LET'S TAKE OUR AFTERNOON
17 RECESS, A 20-MINUTE RECESS, PLEASE, UNTIL 20 MINUTES TO
18 4:00.
19 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL
20 SEE YOU BACK AT 20 TO 4:00.
21 (RECESS TAKEN FROM 3:20 TO 3:55)
22 THE COURT: WE ARE BACK ON THE RECORD.
23 MR. BROWN, YOU MAY PROCEED.
24 MR. BROWN: THANK YOU, YOUR HONOR.
25 UNDERSTANDING THAT THERE'S NO OBJECTION, I'M
26 GOING TO OFFER EXHIBITS 1852-A THROUGH E, WHICH ARE
27 PHOTOGRAPHS OF THE ORMOND BEACH GENERATING STATION, INTO
28 EVIDENCE.

1762

1 THE COURT: ANY OBJECTION?
2 MS. MASON: NO, YOUR HONOR.
3 MR. ESCHER: NO, YOUR HONOR.
4 THE COURT: OKAY. JUST SO THE RECORD IS CLEAR,
5 ON THE DEFENSE SIDE, IF I HEAR ONE OF YOU SAY "NO
6 OBJECTION," WE HAVE THE AGREEMENT THAT THAT PERSON IS
7 SPEAKING FOR EVERYBODY WITH RESPECT TO THE OBJECTIONS.
8 SO I'M NOT ASKING MORE THAN ONE PERSON TO CHIME
9 IN, UNLESS YOUR POSITION IS DIFFERENT.
10 OKAY. 1852-A THROUGH E ARE RECEIVED.
11 MR. BROWN: AND THAT'S 1-8-5-2, BECAUSE IT'S
12 STARTING TO GET REALLY CONFUSING.
13 THE COURT: GOOD POINT. I THINK WE ARE GOING TO
14 HAVE TO, BECAUSE OF THESE NUMBERS WITH THE DASHES -- WHY
15 DON'T WE JUST NOT REFER TO THE NUMBER BEFORE THE DASH FROM
16 NOW ON. AND THE UNDERSTANDING WILL BE WE'RE ONLY TALKING
17 ABOUT -- WE ARE NOT TALKING ABOUT THE BINDER NUMBERS THAT
18 THEY ARE IN, BUT JUST THE NUMBER OF THE EXHIBIT.
19 THAT'S 1852, THAT IS A THROUGH E, AND THAT'S
20 RECEIVED.
21 (DOCUMENTS MORE PARTICULARLY
22 LISTED IN THE INDEX RECEIVED
23 IN EVIDENCE AS DEFENDANTS'
24 EXHIBIT #S 1852-A THROUGH E)
25 MR. BROWN: ALL RIGHT.
26 Q. NOW, MR. WHITTEKER, DUE TO THE WAY I WAS
27 APPROACHING THIS, WE MAY HAVE CREATED SOME CONFUSION,
28 PERHAPS IN ALL DIRECTIONS IN THIS ROOM.

1763

1 I WANT TO JUST MAKE SURE WE ALL UNDERSTAND
2 EXACTLY WHAT THESE PICTURES ARE.
3 FIRST OF ALL, THIS IS THE ORMOND BEACH GENERATING
4 STATION; CORRECT?
5 A. RIGHT.
6 Q. AND THAT'S WHERE YOU WORKED FROM, I THINK YOU
7 TOLD ME, WHAT, '67, '8, '9? WHEN DID YOU WORK THERE?
8 A. '69 THROUGH --
9 Q. '74?
10 A. '73.
11 Q. '73. OKAY.
12 AND YOU WERE -- WERE YOU A FOREMAN OF A
13 PIPEFITTING CREW AT THAT POINT?
14 A. I STARTED AS FOREMAN, ENDED UP AS SUPERINTENDENT.
15 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU SOME
16 QUESTIONS ABOUT THE WORK YOU DID AT ORMOND BEACH AND THE
17 WORK YOUR CREW DID.
18 AND I'M GOING TO LATER LINK IT A LITTLE BIT TO
19 MANDALAY. BUT BASICALLY, THESE QUESTIONS I'M ABOUT TO ASK
20 YOU RELATE TO ORMOND BEACH.
21 I'D LIKE TO SHOW A COUPLE OF MORE UP HERE. FIRST
22 OF ALL --
23 MS. CHABER: I WILL DO IT.
24 MR. BROWN: Q. THERE WE HAVE (INDICATING), LO
25 AND BEHOLD, A SIGN THAT SAYS "ORMOND BEACH GENERATING
26 STATION."
27 WHEN YOU WERE WORKING ON IT IN LATE '69 AND
28 THE '70S, WAS THIS GATE AND THAT SIGN AND THAT LITTLE
1764
1 BUILDING THERE?
2 A. NO.
3 Q. OKAY. THAT CAME LATER.
4 NOW, ALSO FOR CLARIFICATION, THIS IS B, AND THIS

5 SHOWS THE LONG-DISTANCE SHOT.
6 AND YOU TOLD US, I THINK, THERE ARE TWO UNITS
7 THERE?
8 A. YES, THERE IS.
9 Q. YOU WORKED ON THEM BOTH?
10 A. YES, SIR.
11 Q. WHICH WAS UNIT 1, LEFT OR RIGHT?
12 A. LEFT IS UNIT 1.
13 Q. OKAY. AND THERE ARE THREE MORE PICTURES HERE
14 THAT SHOW VARIOUS ANGLES, BUT I THINK IF WE JUST SHOW TWO
15 MORE, ONE OF WHICH HAS BEEN SHOWN, THAT GIVES US A SHOT OF
16 THE GENERATOR DOWN BELOW AND SOME PIPING THAT -- I CAN'T
17 SEEM TO GET THIS HERE (ADJUSTING FOCUS). MAYBE THAT'S
18 BETTER.
19 THAT SHOWS THE STRUCTURE IN THE BACKGROUND AND
20 THE GENERATOR IN THE FOREGROUND. THE PIPING THAT GOES --
21 A. EXCUSE ME. THAT'S THE TURBINE.
22 Q. THE TURBINE. WHERE DID I GET GENERATOR?
23 TURBINE.
24 AND THEN, FINALLY, IF WE GO UP TO THE TOP OF THE
25 STRUCTURE -- I'LL WIPE OUT THE SMOKESTACK, BECAUSE THERE'S
26 NOTHING THERE WE CARE ABOUT.
27 THIS IS TOUGH. OKAY.
28 AND THAT SHOWS THE STRUCTURE IN WHICH IS HOUSED
1765
1 THE BOILER?
2 A. THE PART THAT LOOKS LIKE IT'S GALVANIZED.
3 Q. OKAY.
4 A. UNDERNEATH THE END OF IT THERE, ISN'T IT?
5 Q. I DON'T KNOW. THAT'S THE BOILER?
6 A. THAT ENCLOSES THE BOILER.
7 Q. THAT THING RUNS ALL THE WAY DOWN TO THE GROUND?
8 A. WITHIN A FEW FEET.
9 Q. WHAT IS THIS HERE THAT I'M POINTING AT
10 (INDICATING)?
11 A. THOSE ARE STEAM LINES TO AND FROM THE TURBINE.
12 Q. AND ARE THEY INSULATED?
13 A. YES, THEY ARE.
14 Q. WHO PUTS THE INSULATION ON THEM?
15 A. THE INSULATORS.
16 Q. IS THERE OTHER PIPING IN THIS STRUCTURE?
17 A. YOU'RE STANDING BETWEEN ME AND THERE, AND I CAN'T
18 SEE WHAT YOU'RE POINTING AT.
19 Q. IS THERE OTHER PIPING WITHIN THIS STRUCTURE THAT
20 YOUR CREW PUT TOGETHER?
21 A. YES, THERE IS.
22 Q. COULD YOU GIVE US KIND OF A ROUGH IDEA OF HOW
23 MANY LINEAR FEET, MILES OR WHATEVER IT IS THAT MADE UP THE
24 PIPING THAT YOU ACTUALLY WITH YOUR CREW INSTALLED?
25 A. I DON'T KNOW THE ACTUAL FOOTAGE, BUT I KEPT TRACK
26 UP TO 43,000 FEET, AND I QUIT.
27 Q. AND HOW MUCH LONGER DID YOU WORK ON IT AFTER YOU
28 GOT TO 43,000 FEET?
1766
1 A. THREE YEARS.
2 Q. THREE MORE YEARS AFTER THAT? I'M SORRY.
3 A. YES, SIR.
4 Q. ALL RIGHT. NOW, YOU'VE ALREADY MENTIONED
5 INSULATORS.
6 THAT WAS ANOTHER KIND OF CONSTRUCTION TRADE THAT
7 WAS WORKING THERE WHEN YOU AND YOUR CREW WERE WORKING THERE?
8 A. YES.
9 Q. GIVE THE COURT AND JURY AN UNDERSTANDING OF HOW

10 YOUR WORK -- AND BY "YOU," I MEAN YOUR PIPEFITTERS' WORK --
11 COORDINATES WITH THE INSULATORS, THE PEOPLE THAT ARE DOING
12 THE INSULATION OF THE PIPES.

13 A. I'M SORRY. WHAT DO YOU WANT?

14 Q. YOU CAN'T ASK ME. I HAVE TO ASK YOU.

15 TELL US HOW YOUR WORK CORRELATED WITH THE
16 INSULATION WORKERS WHO WERE INSULATING THE PIPES.

17 A. WELL, AS FAST AS WE PUT IT, THEY WOULD FOLLOW US
18 BEHIND, WITHIN A FEW FEET, AND SOMETIMES EVEN CATCH UP WITH
19 US.

20 Q. SO YOU'RE DOING THE PIPES AND RIGHT BEHIND IS AN
21 INSULATION CREW, AND THEY ARE PUTTING ON THE INSULATION?

22 A. YES.

23 Q. WOULD THERE BE OCCASIONS WHEN YOU HAD TO -- AFTER
24 YOU FINISHED A LENGTH OF PIPE, YOU HAD TO GO BACK AND KIND
25 OF MIX WITH THE INSULATORS, DO SOMETHING BACK IN THEIR
26 GROUP?

27 A. YES. OCCASIONALLY.

28 Q. WHY WOULD YOU HAVE TO DO THAT?

1767

1 A. WHEN YOU WELD THIS PIPE, IT HAS TO BE X-RAYED,
2 EVERY JOINT. AND IF THERE'S -- SOMETIMES THE X-RAYS DON'T
3 COME BACK FOR A COUPLE OF DAYS. THEY COVER IT UP.

4 THEN THEY GOT TO UNCOVER IT. WE GO BACK AND CUT
5 PART OF THE PIPE OUT.

6 Q. SO YOU HAVE TO REDO SOME OF YOUR WORK?

7 A. YES.

8 Q. NOW, THIS PIPING GOING TOGETHER, HOW WERE THE
9 LINKS CONNECTED?

10 A. THEY'RE WELDED WITH WHAT WE CALL HEAVY WELDING.

11 Q. OKAY. AND ARE THERE MECHANICAL JOINTS ALSO?

12 A. NOT IN STEAM LINES.

13 Q. NOT IN THE STEAM LINES?

14 A. NO, SIR.

15 Q. HOW OFTEN IN THE STEAM LINE WOULD YOU HAVE A
16 VALVE?

17 A. WHERE NEEDED.

18 Q. ALL RIGHT.

19 IS THERE ANY MEANINGFUL WAY TO TELL US
20 APPROXIMATELY HOW OFTEN THOSE VALVES WOULD HAVE TO BE
21 INSTALLED?

22 A. USUALLY, WHERE THEY ENTER -- PROBABLY ENTER THE
23 TURBINE OR LEAVE THE BOILER.

24 Q. HOW ABOUT IN A BEND?

25 A. NO.

26 Q. THEY DON'T -- THEY ARE WELDED THERE TOO?

27 A. YES. EXCUSE ME. NO.

28 IN THE BENDS, THAT BEND IS BENT IN A FACTORY

1768

1 SOMEWHERE. THOSE BENDS THAT YOU SEE IN THE TOP, THEY'RE
2 ALREADY BENT WHEN THEY COME ON THE JOB.

3 Q. ALL RIGHT. NOW, IN ADDITION TO STEAM LINES, ARE
4 THERE LINES IN THIS STRUCTURE THAT DEAL WITH THE BOILER?

5 A. I DIDN'T UNDERSTAND.

6 Q. WATER LINES?

7 A. YES.

8 Q. HIGH-PRESSURE LINES?

9 A. WATER, AIR, FUEL AND EXHAUST.

10 Q. AND STEAM?

11 A. AND STEAM.

12 Q. YOU ARE DOING ALL THOSE PIPES?

13 A. YES, SIR.

14 Q. NOW, ARE ALL THOSE PINES INSULATED?

15 A. EXHAUST PIPES USUALLY ARE ONLY INSULATED WHERE
16 YOU MIGHT TOUCH THEM.

17 Q. SO THEY ARE THERE FOR SAFETY?

18 A. SAFETY REASONS.

19 Q. NOW, IN CONSTRUCTING THIS STRUCTURE AND PIPING,
20 THIS INSULATION -- ARE ALL THE TYPES OF LINES THAT YOU JUST
21 MENTIONED, ARE THEY ALL BEING INSULATED AND PUT TOGETHER BY
22 THE PIPEFITTERS AT THE SAME TIME?

23 A. NO, NOT ALL AT THE SAME TIME.

24 Q. DO YOU GO THROUGH, DO STEAM -- NOT NECESSARILY IN
25 THAT ORDER, BUT ONE TYPE, ANOTHER TYPE, ANOTHER TYPE,
26 ANOTHER TYPE? IS THAT THE WAY IT WORKS?

27 A. WE FOLLOW THE CONFORMATION OF WHAT OTHER PEOPLE
28 ARE DOING. THAT WE CAN WORK ON A CERTAIN PIPE AT A CERTAIN
1769 TIME, AND THEN IF WE CATCH UP WITH THE BOILERMAKERS, WE GOT
2 TO GO TO ANOTHER LINE.

3 Q. YOU CAN'T TELL FROM LOOKING AT THIS PHOTOGRAPH,
4 EVEN IF WE TURN THE LIGHTS DOWN -- ARE THERE FLOORS ON THOSE
5 VARIOUS LEVELS GOING UP TO THE TOP?

6 A. WHERE THE TURBINE WAS?

7 Q. YES.

8 A. THAT'S ABOUT 30 FOOT ABOVE THE FLOOR, ABOVE THE
9 GROUND.

10 Q. THE TURBINE IS?

11 A. THE DECK WHERE THE TURBINE IS SITTING IS ABOUT 30
12 FOOT ABOVE THE GROUND.

13 Q. OKAY. NOW, I SEE LADDERS BACK IN THERE. IT
14 LOOKS LIKE FLOORS.

15 ARE THOSE SOLID FLOORS?

16 A. NO, THEY'RE CORK, MESH, STEEL.

17 Q. STEEL.

18 NOW, LET ME ASK YOU THIS: WHEN YOUR -- FIRST OF
19 ALL, HOW BIG WAS YOUR CREW AT ORMOND BEACH?

20 A. EACH CREW IS 12 MEN, AND I HAD ABOUT 250 MEN ALL
21 TOGETHER.

22 Q. BEFORE I GO TO THE WAY THE FLOORS ARE LAID OUT,
23 LET ME ASK YOU THIS: AS FOREMAN, WHAT SPECIFICALLY WERE
24 YOUR DUTIES AT ORMOND BEACH WITH RELATIONSHIP TO THOSE
25 PIPEFITTERS?

26 A. MY DUTIES WAS TO TAKE THE PRINTS OR PICTURES OF
27 THEM AND GIVE THEM TO MY FOREMAN AND THEIR CREW TO FABRICATE
28 AND INSTALL.

1770

1 Q. THIS WAS WHILE YOU WERE SUPERINTENDENT?

2 A. AND AS THE GENERAL FOREMAN.

3 Q. OKAY. WERE YOU A FOREMAN BELOW GENERAL FOREMAN?

4 A. I WAS UNTIL WE GOT TO THE POINT WHERE WE HAD MORE
5 THAN 12 MEN. THEN I BECAME GENERAL FOREMAN.

6 Q. SO YOU WERE FOREMAN, GENERAL FOREMAN AND THEN
7 EVENTUALLY SUPERINTENDENT?

8 A. EVENTUALLY SUPERINTENDENT.

9 Q. NOW, IN CARRYING OUT YOUR JOBS IN THOSE THREE
10 LEVELS, WHERE DID YOU HAVE TO BE?

11 A. ALL OVER THE PLANT.

12 Q. WHERE WERE YOU IN RELATIONSHIP TO YOUR
13 PIPEFITTERS?

14 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS TO
15 TIME.

16 MR. BROWN: Q. DURING THE CONSTRUCTION, DURING
17 THIS THREE YEARS, WHERE WOULD YOU NORMALLY BE FOUND?

18 A. I FOLLOWED EACH ONE, OBSERVED WHAT THEY WERE
19 DOING.

20 Q. HOW CLOSE WOULD YOU BE?
21 A. SIR?
22 Q. HOW CLOSE WOULD YOU BE TO THEM?
23 A. VERY FEW FEET.
24 Q. HOW CLOSE WOULD YOU BE TO THE INSULATORS WHO WERE
25 INSTALLING ASBESTOS?
26 A. I KEPT --
27 MR. ESCHER: OBJECTION, YOUR HONOR. LACK OF
28 FOUNDATION AS TO "ASBESTOS."

1771

1 MR. BROWN: STRIKE "ASBESTOS."
2 Q. HOW CLOSE WOULD YOU BE TO THE INSULATORS WHO WERE
3 PUTTING INSULATION ON THE PIPES THAT WE'VE TALKED ABOUT?
4 A. I COULD WALK BY WITHIN A FEW FEET OF THEM.
5 Q. HOW MUCH OF YOUR TIME WOULD YOU SPEND IN THE KIND
6 OF CLOSENESS, THE PROXIMITY TO INSULATORS AND YOUR MEN THAT
7 YOU'VE JUST DESCRIBED, WHAT PERCENT?
8 A. ABOUT 95 PERCENT OF MY TIME.
9 Q. OKAY. NOW, WAS THERE SOME DUST BEING CREATED BY
10 THE INSULATION?
11 A. OH, YES.
12 Q. DESCRIBE THAT.
13 A. IT'S A WHITE DUST.
14 Q. OKAY.
15 A. AND IT'S VERY WINDY THERE.
16 Q. OKAY. AND SO YOU COULD SEE DUST?
17 A. AT TIMES, YES.
18 Q. ALL RIGHT. AND WHEN YOU SAY "WINDY," WAS IT
19 ONSHORE OR OFFSHORE WINDS?
20 A. IN THE MORNING, IT'S ONSHORE. IN THE AFTERNOON,
21 IT WAS OFFSHORE.
22 Q. DOWN BELOW ON THE DECK, WAS THERE ANY AREA WHERE
23 THE INSULATORS WERE DOING SOME KIND OF FABRICATION WORK?
24 A. YES. THEY HAD THEIR FABRICATION SHOP SET UP.
25 YOU CAN'T SEE IT. IT'S TO THE LEFT OF THE UNIT 1.
26 Q. TELL US WHAT IS MEANT BY "FABRICATION WORK."
27 A. THIS IS WHERE THEY CUT -- USED THEIR SAWS TO CUT
28 THE LENGTH IT CAME IN. I DON'T HOW LONG THE PIECES WERE,

1772

1 BUT THEY COULD CUT THEM TO FIT. THEY GO AND MEASURE THE
2 PIPE. THEN THEY COME BACK AND CUT IT TO IT.
3 Q. SO THEY WOULD CUT THEM IN BULK DOWN BELOW?
4 A. YES.
5 Q. ALL RIGHT. WHAT KIND OF SAWS DID THEY USE DOWN
6 THERE?
7 A. BAND SAW. I DON'T KNOW WHAT THE OTHER SAW WAS.
8 Q. WHEN THE BAND SAW WAS OPERATING -- AND BY "BAND
9 SAW" WHAT DO YOU MEAN? IS IT A LONG --
10 A. NO. IT'S A BLADE THAT GOES ROUND AND ROUND.
11 Q. WHEN THAT BAND SAW WAS OPERATING, CUTTING THAT
12 INSULATION, WHAT COULD YOU SEE? WHAT CAME OUT OF THAT SAW?
13 A. IT WOULD BE DUST OUT OF IT.
14 Q. HOW MUCH DUST?
15 A. PARTICLES FROM WHAT THEY WERE SAWING.
16 Q. THE INSULATION?
17 A. YES.
18 Q. THAT DUST, WHERE WOULD IT BLOW TO? AS THE SAW
19 WAS OPERATING, WHERE WOULD IT GO?
20 A. USUALLY, IT FLEW RIGHT UP STRAIGHT THROUGH THE
21 PLANT. IT JUST DISSIPATED AS IT WENT UP.
22 Q. UP THROUGH THE STRUCTURE?
23 A. YES.
24 Q. WHERE YOU AND YOUR PIPEFITTERS WERE WORKING?

25 A. YES, SIR.
26 Q. DID YOU DRIVE TO WORK?
27 A. YES, I DID.
28 Q. PARK YOUR CAR NEARBY?
1773
1 A. OFF TO THE RIGHT.
2 Q. WHEN YOU CAME OUT TO YOUR CAR, WOULD YOU FIND
3 DUST ON YOUR CAR?
4 A. ALWAYS.
5 Q. HOW MUCH?
6 A. ENOUGH. YOU COULD SEE IT. YOU HAVE TO CLEAN THE
7 WINDSHIELD.
8 Q. I KEEP FORGETTING THE NUMBER OF YEARS YOU TOLD ME
9 YOU WERE THERE.
10 I THINK YOU SAID '69 --
11 A. FIVE YEARS.
12 Q. THREE OR FOUR, WAS IT? I'M SORRY?
13 A. FIVE YEARS.
14 Q. FIVE YEARS.
15 NOW, WHAT REQUIRED YOU TO PUT VALVES IN SOME OF
16 THESE PIPES? WHAT WAS THE REQUIREMENT?
17 A. IN CASE YOU HAD -- IN CASE YOU HAD TO CUT THE
18 STEAM TO SHUT IT OFF, YOU HAVE -- OF COURSE, YOU HAD TO HAVE
19 A VALVE. SOMEBODY ENGINEERED IT. AND THAT'S WHERE WE PUT
20 IT.
21 Q. SO THEY TOLD YOU WHERE TO PUT THE VALVE?
22 A. YES.
23 Q. YOU SAID THEY WEREN'T ON THE STEAM LINES.
24 WHAT LINES WERE THEY ON?
25 A. OTHER LINES.
26 Q. WHAT LINES WOULD THE VALVES GO ON TO?
27 A. MOSTLY AIR, WATER AND FUEL.
28 Q. AND WERE ALL OF THOSE INSULATED LINES?
1774
1 A. AFTERWARDS, YES.
2 Q. NOW, WHEN YOU INSTALL A VALVE, JUST GIVE US A
3 BRIEF IDEA OF WHAT IS INVOLVED.
4 WHAT GOES INTO THAT VALVE BESIDES THE VALVE
5 ITSELF?
6 A. THE VALVE IS ALREADY TOGETHER.
7 Q. RIGHT.
8 A. WE DON'T -- BUT TO INSTALL IT, THE FIRST THING
9 YOU DO IS INSTALL THE FLANGE THAT IT'S GOING TO FIT ON.
10 THEY'RE WELDED ON.
11 AND THEN THE VALVE IS SLIPPED BETWEEN THEM. ON
12 STEAM LINES, IT'S PUT TOGETHER WITH A GASKET CALLED A NEXT.
13 THE NEXT IS A METALLIC GASKET.
14 Q. AND THAT HAS A METAL OUTSIDE?
15 A. IT HAS METAL OUTSIDE. SEEMS LIKE HOLLOW SPRINGS
16 THAT COMPRESS WHEN YOU STRAIGHTEN UP THE BOLTS.
17 Q. AND WHEN YOU HAVE THE METALLIC OR WHATEVER GASKET
18 YOU PUT IN A PARTICULAR VALVE, IS THERE THEN SOMETHING PUT
19 IN CALLED PACKING?
20 A. NOT ON A STEAM -- NOT ON A STEAM LINE.
21 Q. ALL RIGHT.
22 A. NOT REALLY.
23 Q. WE ARE NOT JUST TALKING ABOUT STEAM, MR.
24 WHITTEKER. ANY OF THESE LINES?
25 A. YES. OTHER TYPES OF VALVES THAT YOU PUT PACKING
26 IN.
27 Q. HOW MANY OF THE VALVES THAT YOUR CREW WERE
28 INSTALLING WOULD HAVE PACKING; WHAT PERCENT?
1775

1 A. THEY ALL COME WITH IT, BUT THEY -- BY THAT TIME,
2 IT MAY HAVE COMPRESSED ITSELF, ESPECIALLY IF THEY HAD OPENED
3 ALL THE WAY AND SHIPPED THAT WAY. THEN, YOU WOULD HAVE TO
4 PUT A LITTLE MORE INTO IT.

5 Q. SO YOU JUST ADD MORE TO --

6 A. ADD MORE TO IT.

7 Q. ALL RIGHT. AND THEN, WOULD YOU HAVE TO CUT THAT
8 TO PUT IT IN THERE?

9 A. SOMETIMES. IT'S ACCORDING TO THE TYPE OF
10 PRESSURE THAT WAS ON IT. WE WOULD CUT IT. IF NOT, IT WAS A
11 COMPRESSED -- COMPRESSED PACKING THAT CAME WITH IT.

12 Q. ALL RIGHT. NOW, YOU SAID FIVE YEARS THERE, BUT
13 I'M NOT SURE THAT FITS WITH THE TIME AS YOU FOUND IT IN THE
14 SOCIAL SECURITY RECORDS.

15 WHAT WERE THE YEARS YOU WORKED AT ORMOND BEACH?

16 A. JULY TO SEPTEMBER OF '69.

17 Q. RIGHT.

18 A. THROUGH APRIL-JUNE OF '73 AND A SHORT PERIOD IN
19 '74.

20 Q. OKAY. SO NOBODY HAS EVER PRAISED MY EIGHTH GRADE
21 ARITHMETIC. FOUR TO FIVE YEARS IS WHAT YOU'RE TALKING
22 ABOUT. MORE LIKE FOUR YEARS THAN FIVE YEARS OR NOT? AM I
23 MISSING SOMETHING?

24 A. CLOSE ENOUGH.

25 Q. OKAY. FOR GOVERNMENT WORK. OKAY.

26 DURING THAT ENTIRE PERIOD WHEN YOU WERE WORKING
27 THERE, WITH YOUR VARIOUS CREWS AND YOUR VARIOUS LEADERSHIP
28 POSITIONS, WERE THE INSULATORS THERE DOING THEIR WORK?

1776

1 A. THEY WERE DOING THEIR WORK.

2 Q. SO ON A DAILY BASIS, YOU AND YOUR CREW WERE
3 EXPOSED TO WHATEVER DUST THERE WAS THAT WAS BEING CREATED BY
4 THE INSULATORS?

5 A. YES.

6 Q. OKAY. NOW, WHEN YOU WERE WORKING AT ORMOND BEACH
7 IN THIS CONSTRUCTION OF THIS POWER PLANT, WHAT KIND OF WORK
8 CLOTHES WOULD YOU WEAR?

9 A. I DRESSED IN USUALLY JEANS, A SHIRT AND A JACKET.

10 Q. DURING THE TIME THAT YOU WORKED AS A PIPEFITTER,
11 DID YOU EVER WEAR OVERALLS?

12 A. YES, I DID.

13 Q. WHEN DID YOU DO THAT?

14 A. WHEN I WORKED AS A JOURNEYMAN. NOT ON THAT JOB.

15 Q. SO DID YOU HAVE CLOTHES, A TYPE OF CLOTHES YOU
16 WORE WHEN A JOURNEYMAN AND THEN ANOTHER KIND THAT YOU WORE
17 WHEN YOU WERE A FOREMAN/SUPERINTENDENT?

18 A. USUALLY, AS A JOURNEYMAN, YOU WORE JEANS AND A
19 SHIRT. AND THEN YOUR OVERALLS WENT OVER THEM. OVERALLS.
20 PERSONALLY, I WORE OVERALLS.

21 Q. DESCRIBE THE OVERALLS THAT YOU WORE.

22 A. THEY WERE THE KIND THAT HAD BIBS ON THEM, AND
23 SEVERAL POCKETS THAT CARRY TOOLS, AND HAD A BACK ON IT. AND
24 THEN WHAT WE CALL GALLOWSES (INDICATING), I GUESS.

25 Q. AND YOUR SHIRT WAS VISIBLE FROM THE SIDE?

26 A. YES.

27 Q. AND THEN, YOU'D HAVE PANTS UNDERNEATH THEM?

28 A. MOST PEOPLE DID.

1777

1 Q. OKAY. THEY FIT LOOSELY?

2 A. YES.

3 Q. ALL RIGHT. NOW, WHEN YOU WERE WORKING AT ORMOND,
4 AND YOU WEREN'T A JOURNEYMAN, YOU WORE WHAT?

5 A. SLACKS AND A SHIRT AND A COAT.

6 Q. ALL RIGHT.
7 WHEN YOU CAME HOME OR BEFORE YOU LEFT FOR HOME,
8 DID YOU BLOW OFF YOUR CLOTHES WITH AN AIR HOSE AT ORMOND?
9 A. YOU MEAN ON THE JOB?
10 Q. ON THE JOBSITE.
11 A. YES, I DID.
12 Q. THEN WHAT WOULD YOU DO? YOU'D GO OUT, GET IN THE
13 CAR?
14 A. GET IN THE CAR.
15 Q. YOU'D DRIVE HOME?
16 A. DRIVE HOME.
17 Q. WHEN YOU GOT HOME, WOULD YOUR CHILDREN BE THERE
18 MOST OF THE TIME? WOULD YOUR CHILDREN BE THERE WHEN YOU GOT
19 HOME?
20 A. YES.
21 MR. ESCHER: OBJECTION, YOUR HONOR.
22 VAGUE TO AS WHICH CHILDREN. HE'S GOT SIX
23 CHILDREN.
24 HOW MANY CHILDREN?
25 MR. BROWN: I WAS ABOUT TO GO INTO THAT.
26 THE COURT: YOU ANSWERED SO QUICKLY. I'M GOING
27 TO STRIKE THE ANSWER, BECAUSE THE OBJECTION WAS A GOOD ONE.
28 LET ME JUST EXPLAIN TO THE WITNESS. YOU NEED TO

1778

1 SLOW DOWN A LITTLE BIT, BECAUSE THE LAWYERS HAVE TO BE GIVEN
2 A CHANCE TO MAKE AN OBJECTION TO THE QUESTION, IF THEY
3 WANT. AND THEN IF THAT HAPPENS, YOU CAN'T ANSWER UNTIL I
4 RULE, BECAUSE I HAVE TO DECIDE WHETHER OR NOT YOU SHOULD
5 ANSWER.

6 SO WE'RE GOING TO HAVE TO SLOW DOWN A LITTLE BIT
7 TO GIVE THE LAWYERS A CHANCE TO MAKE AN OBJECTION.

8 SO AFTER YOU HEAR A QUESTION, IF YOU DON'T MIND,
9 JUST WAIT A SECOND OR TWO BEFORE YOU ANSWER, SO THAT IF THEY
10 WANT TO MAKE AN OBJECTION, WE ALL GET A CHANCE TO DO OUR
11 JOBS.

12 AND THE REASON I'M STRIKING THE LAST ANSWER IS
13 BECAUSE YOU ANSWERED IT SO QUICKLY, AND YOU PROBABLY DON'T
14 UNDERSTAND THIS PROCESS, WHICH IS WHY I'M EXPLAINING IT TO
15 YOU NOW, BUT THEY DIDN'T HAVE A CHANCE TO GET OUT THE
16 OBJECTION, AND IT WAS A GOOD OBJECTION. OKAY.

17 MR. BROWN: Q. ORDINARILY, COMMONLY, WHEN YOU
18 GOT HOME FROM WORK, WHICH OF YOUR CHILDREN WOULD BE THERE?

19 MR. ESCHER: OBJECTION. VAGUE AS TO TIME.

20 NOW ARE WE TALKING ABOUT ORMOND BEACH?

21 MR. BROWN: WE ARE.

22 THE COURT: WE'RE TALKING ORMOND BEACH NOW?

23 MR. BROWN: ORMOND BEACH.

24 THE WITNESS: ACCORDING TO THE TIME OF THE
25 YEAR. BECAUSE IF IT WAS SUMMERTIME, THE KIDS -- THE BOYS
26 WOULD BE PLAYING LITTLE LEAGUE, AND THEY WOULD BE OUT IN THE
27 BACK, IN SCHOOL. I USUALLY DIDN'T SEE THEM UNTIL ABOUT
28 6:30.

1779

1 MR. BROWN: Q. ALL RIGHT.

2 A. THE REST OF THE TIME, THEY WERE ALL THERE.

3 Q. IF IT WASN'T SUMMER?

4 A. YES.

5 Q. LESLIE, IN 1969, WHEN YOU STARTED WORKING AT
6 ORMOND, WAS 10 YEARS OLD; IS THAT CORRECT.

7 BORN IN '59. WE ARE NOW IN '69?

8 A. YES.

9 Q. 10 YEARS OLD. ALL RIGHT.

10 SO YOU WORK THERE WHILE SHE IS 10 THROUGH ABOUT

11 14, SOMETHING LIKE THAT?
12 A. LIKE I SAID BEFORE, YOU SHOULD ASK MY WIFE.
13 Q. ALL RIGHT. OKAY. I WILL. WE'LL BACK OFF FROM
14 THERE. ALL RIGHT.
15 NOW, THIS CAR THAT YOU DROVE BACK AND FORTH IN,
16 WAS THAT A CAR YOU DROVE YOUR FAMILY AROUND IN?
17 A. YES, I DID.
18 Q. DID LESLIE RIDE IN THAT CAR COMMONLY?
19 A. YES.
20 Q. WHEN YOU CAME HOME FROM WORK OR AT ANY TIME,
21 WOULD YOU CLEAN OUT THE INTERIOR, BLOWING OUT ANY -- OR
22 CLEANING OUT ANYTHING THAT MIGHT HAVE COLLECTED IN THERE,
23 DUST THAT MIGHT HAVE COLLECTED?
24 A. NOT USUALLY.
25 Q. OKAY. AND SINCE YOUR WIFE DID THE LAUNDRY, I
26 THINK I'LL ASK HER ABOUT THE LAUNDRY WHILE YOU WERE AT
27 ORMOND BEACH.
28 LET ME GO BACK A LITTLE BIT ON INSULATORS WHO
1780
1 WERE WORKING AT ORMOND.
2 THESE FLOORS THAT I WAS -- THAT I MADE REFERENCE
3 TO, YOU SAID THEY WERE METAL GRATES?
4 A. YES.
5 Q. IF SOMEBODY WAS WORKING UP ON THE HIGHER GRATES,
6 IF INSULATORS WERE ON THE HIGHER GRATES, AND THEY CREATED
7 DUST AND BITS OF MATERIAL FROM INSULATION, AND IT WENT DOWN,
8 WHERE WOULD IT GO DOWN TO?
9 A. RIGHT THROUGH THE GRATING TO THE NEXT -- WHATEVER
10 IT LANDED ON.
11 Q. SO IT WOULD GET HUNG UP ON THE GRATES AND PIPES?
12 A. YES.
13 Q. THE GRATING PART OF THE FLOOR?
14 A. YES.
15 Q. SOME OF IT WOULD GO RIGHT DOWN AND DRIP ON DOWN?
16 A. YES.
17 Q. DID YOU EVER HAVE THE EXPERIENCE WORKING THERE OF
18 FEELING THE INSULATION MATERIAL FROM THE INSULATION CREW
19 THAT WERE UP ABOVE YOU? DID YOU EVER HAVE THAT EXPERIENCE?
20 A. OH, YES.
21 Q. WAS THAT COMMON?
22 A. IF THEY WERE WORKING THERE, YES, IT'S COMMON.
23 Q. IF THEY WERE ABOVE YOU?
24 A. IF THEY WERE WORKING.
25 Q. SOMETIMES YOU WORKED ABOVE THEM, I GUESS?
26 A. YES.
27 Q. OKAY. ALL RIGHT. AND I GUESS JUST ONE FINAL
28 THING ABOUT THOSE INSULATORS.
1781
1 WERE THEY USING ANY TOOLS IN THE INSULATION
2 PROCESS UP ON THE FLOORS WHEN THEY WERE INSTALLING ON THE
3 PIPES?
4 A. THEY USED -- USUALLY HAD A LITTLE HAND-HELD SAW
5 OR A KNIFE THAT WAS FORMED. A BUTCHER KNIFE, BUT IT WAS
6 MADE DIFFERENT.
7 Q. AND DID YOU OBSERVE THEM USING THAT?
8 A. QUITE OFTEN.
9 Q. WHAT WERE THEY DOING WITH IT?
10 A. USUALLY, THERE WAS A FITTING THAT THEY HAD TO FIT
11 AROUND, AND THEY SAWED A HOLE IN IT, TRIMMED IT SO THAT THEY
12 COULD GET TO IT.
13 Q. WHAT, IF ANY, DUST OR DEBRIS WOULD YOU OBSERVE
14 THAT WAS BEING CREATED BY THE INSULATORS IN THE INSTALLATION
15 OF THEIR PIPE INSULATION?

16 A. I DIDN'T UNDERSTAND THAT.
17 Q. I'M SORRY. I LOOKED AWAY FROM YOU, DIDN'T I? IF
18 I LOOK AT YOU, IT HELPS.
19 WHAT, IF ANY -- WHAT, IF ANY, DUST AND DEBRIS
20 WOULD YOU SEE THE INSULATION WORKERS CREATE WHEN THEY WERE
21 DOING THEIR INSTALLING OF INSULATION?
22 A. I HAVE SEEN IT, YES.
23 Q. WHAT WOULD YOU SEE? TELL US WHAT YOU'D SEE.
24 A. WELL, IT'S A WHITE SUBSTANCE THAT, WHEN YOU SAW
25 IT, IT'S FINE, AND A LITTLE -- THE WIND BLOWING, IT WILL
26 JUST CAUSE IT TO GO UP.
27 Q. SOME OF IT WAS A FINE DUST?
28 A. YES. NOT USUALLY WHERE THE FLANGE IS, BECAUSE
1782
1 THAT'S COMES SEPARATE. THAT COMES LATER, AFTER WE'VE GONE.
2 Q. OKAY. WAS THERE ANY CLEANUP DONE WHILE YOU WERE
3 THERE OF MATERIALS THAT WERE TURNING INTO SCRAPS OF DUST OR
4 PIECES FROM THE INSULATION WORKERS?
5 A. USUALLY, THEY CLEANED UP THEIR OWN PIECES THAT
6 THEY CUT OFF, OR CHUNKS THAT THEY CUT OUT, AND PUT IN A BOX,
7 BUT --
8 Q. AND WHAT WAS THE TIMING OF THAT CLEANUP COMPARED
9 TO WHEN YOU WERE THERE OR NOT THERE?
10 A. WELL, IT WAS ACCORDING TO HOW THEY WERE FINISHING
11 OFF WHAT THEY WERE DOING.
12 Q. WOULD THERE BE SOME TIMES CLEANING UP WHEN YOU
13 WERE THERE?
14 A. YES, THERE WOULD.
15 Q. WHAT WOULD THEY USE TO CLEAN UP?
16 A. THE PIECES THAT THEY HAD -- THEY CUT OUT OR
17 DUST. I'VE NEVER SEEN THEM PICK UP DUST.
18 Q. DID THEY USE A BROOM?
19 A. NO. THERE'S NO USE TO USING A BROOM ON GRATING.
20 Q. DID THEY USE AIR?
21 A. SIR?
22 Q. AN AIR BLOWER?
23 A. THEY DIDN'T HAVE IT, NO.
24 Q. LET ME TAKE YOU BACK NOW TO A TIME PERIOD PRIOR
25 TO ORMOND BEACH. AND NOW WE ARE GOING TO START WHEN YOU
26 WERE A BUSINESS AGENT, WHICH I THINK YOU ESTABLISHED WAS IN
27 1960, 1960.
28 A. YES. '60, I BELIEVE IT WAS.
1783
1 Q. AND I THINK YOU TOLD US EARLIER THAT YOU STARTED
2 TO SMOKE IN 1960, AND YOU DID -- YOU CONTINUED TO SMOKE
3 THROUGH 1963?
4 A. YES, SIR.
5 Q. DO YOU RECALL IF, DURING THAT PERIOD OF TIME,
6 YOUR WIFE WAS SMOKING?
7 A. OCCASIONALLY.
8 Q. ALL RIGHT. YOU SAID YOU QUIT IN 1963?
9 A. I BELIEVE IT WAS, YES.
10 Q. COULD YOU EXPLAIN TO US -- MY MIND IS GOING A
11 LITTLE SOFT.
12 DID I ASK YOU WHEN AND THE CIRCUMSTANCES?
13 A. YES, YOU DID. SHE WAS PREGNANT WITH WHO WE
14 CALLED DAVID.
15 AND SHE SAID IT MADE HER NAUSEOUS, SO I JUST
16 QUIT.
17 Q. DID SHE QUIT TOO?
18 A. I DIDN'T KNOW THAT SHE WAS SMOKING THEN.
19 Q. ALL RIGHT. DURING THE TIME THAT YOU WERE THE
20 BUSINESS AGENT, WHAT GENERALLY IS THE DUTY THAT YOU HAD AS A

21 BUSINESS AGENT IN YOUR UNION? WHAT WERE YOU REQUIRED TO DO?
22 A. THERE'S A CONTRACT SIGNED BETWEEN THE CONTRACTORS
23 AND THE UNION THAT ARE DOING THE JOBS THAT SAID THEY WOULD
24 DO CERTAIN THINGS.

25 AND IT WAS MY JOB TO SEE THAT THE CONTRACTORS
26 KEPT UP THEIR END OF IT AND THAT OUR JOURNEYMAN OR PEOPLE
27 WORKED TO KEEP UP OUR END OF IT.

28 Q. ALL RIGHT. DID YOU HAVE TO VISIT JOBSITES?

1784

1 A. ALL THE JOBSITES.

2 Q. WHAT PERCENTAGE OF YOUR TIME WAS SPENT VISITING
3 JOBSITES WHERE PIPEFITTERS OR PLUMBERS WERE DOING THEIR
4 WORK?

5 A. THAT WAS ALWAYS.

6 Q. SO THAT WAS WHERE YOU SPENT YOUR DAY?

7 A. EXCEPT FOR DRIVING FROM ONE TO THE OTHER, IT WAS
8 100 PERCENT OF THE TIME.

9 Q. DID YOU -- LET'S SEE. THE MANDALAY PLANT, WAS
10 THAT BUILT BY THE TIME YOU BECAME A BUSINESS AGENT OR ALMOST
11 BUILT?

12 A. I VISITED ONE OR TWO TIMES AFTER I BECAME A
13 BUSINESS AGENT.

14 Q. INCIDENTALLY, THE MANDALAY PLANT, DID IT LOOK
15 VERY SIMILAR TO THE ORMOND PLANT?

16 A. YES, EXCEPT IT'S NOT AS BIG.

17 Q. AND THE WORK THAT YOU DESCRIBED YOU DID AS A
18 PIPEFITTER AT ORMOND BEACH, WAS IT VERY SIMILAR TO THE WORK
19 THAT THE PIPEFITTERS DID AT MANDALAY?

20 A. YES, IT WAS.

21 Q. AND WAS THE INTERRELATION OR INTERACTION BETWEEN
22 PIPEFITTERS AND INSULATORS THE SAME DURING CONSTRUCTION OF
23 MANDALAY AS IT WAS AT ORMOND, AS YOU'VE DESCRIBED IT?

24 A. CLOSE, VERY CLOSE.

25 Q. NOW, DID YOU VISIT MANDALAY VERY MUCH AS A
26 BUSINESS AGENT?

27 A. I CAN ONLY REMEMBER TWICE.

28 Q. A COUPLE OF TIMES IN THAT THREE YEARS?

1785

1 A. THE JOB WAS OVER.

2 Q. OKAY. AND WHEN YOU DID, YOU WOULD GO TO WHERE
3 YOUR PIPEFITTERS WERE WORKING?

4 A. RIGHT.

5 Q. CONSTRUCTION WAS DONE, BUT WHAT WERE THEY DOING
6 THEN? WERE THEY UP IN THE STRUCTURE SOMEWHERE?

7 WHAT WERE THEY DOING?

8 A. THEY'RE FINISHING THE STRUCTURE OR FINISHING WHAT
9 WE HADN'T GOT OR AN ADDITION.

10 Q. WERE THE INSULATORS STILL THERE?

11 A. I COULDN'T SAY.

12 Q. OKAY. WHAT OTHER KIND OF JOBS DID YOU VISIT?
13 WHAT OTHER KIND OF JOBS WERE THERE THAT YOUR PIPEFITTERS OR
14 PLUMBERS WERE DOING THAT WOULD CAUSE YOU TO GO TO A JOBSITE?

15 A. WE HAD A PAPER PLANT. WE WERE BUILDING A NEW
16 ONE. WE HAD HOUSING ALL OVER THE COUNTY. WE HAD -- WE
17 CALLED IT ROCKETDYNE, WHICH IS THE TESTING OF THE ROCKETS
18 AND THE POWER UNITS THAT GO TO THE MOON.

19 Q. WHAT THEY DID THERE WAS PUT THE ROCKETS IN A
20 STRUCTURE AND APPLY FULL POWER BUT HOLD THEM THERE?

21 A. HOLD THEM DOWN. HOLD THEM.

22 Q. THEN, THEY HAD TO REBUILD IT?

23 A. USUALLY, THE FIRE POWER THAT COMES OUT OF THOSE
24 WILL BURN ALMOST ANYTHING. IT TORCHES AND YOU HAVE TO
25 REBUILD IT.

26 Q. SO YOUR PIPEFITTERS WERE WORKING THERE?
27 A. YES.
28 Q. LET'S JUST TAKE ROCKETDYNE FIRST.
1786
1 WAS THERE INSULATION WORK GOING ON AT ROCKETDYNE
2 WHEN YOU VISITED IT?
3 A. YES, THERE WAS.
4 Q. SO THERE WERE ASBESTOS -- THERE WAS INSULATION
5 WORKERS THERE DOING THAT?
6 A. YES, THERE WAS.
7 Q. NOW, WHEN YOU WERE A BUSINESS AGENT, LET'S SAY AT
8 ROCKETDYNE, WOULD YOU GO TO WHERE AT LEAST PART OF YOUR --
9 YOU WERE VISITING WHERE YOUR PEOPLE WERE --
10 A. YES, SIR.
11 Q. -- YOUR UNION MEMBERS?
12 A. YES, SIR.
13 Q. YOU'D MEET WITH THEM THERE?
14 A. YES.
15 Q. ALL RIGHT. AND WOULD YOU BE EXPOSED THEN TO
16 WHATEVER DUST THEY CREATED OR THE INSULATION CREATED?
17 MR. ESCHER: OBJECTION, YOUR HONOR. THAT CALLS
18 FOR A CONCLUSION.
19 MR. BROWN: I THINK THE WITNESS KNOWS WHETHER --
20 THE COURT: HOLD ON. LET ME JUST HEAR THE
21 QUESTION BACK.
22 (RECORD READ)
23 THE COURT: WHAT'S THE PROBLEM WITH THAT
24 QUESTION?
25 MR. ESCHER: I THINK THAT ISSUE OF WHETHER HE'S
26 EXPOSED TO THE DUST AS OPPOSED WHETHER HE EXPERIENCED IT.
27 THE COURT: THAT'S A FINE DISTINCTION. BUT IF
28 YOU FEEL BETTER WITH THE OTHER QUESTION, WHY DON'T YOU
1787
1 REWORD IT. I DON'T GET THE DISTINCTION.
2 ASK HIM IF HE EXPERIENCED THE DUST.
3 MR. BROWN: ALL RIGHT.
4 THE COURT: THAT'S WHAT YOU'RE ASKING ANYWAY.
5 MR. BROWN: THAT'S RIGHT.
6 THE COURT: OKAY.
7 MR. BROWN: Q. IN YOUR VISIT TO ROCKETDYNE,
8 WHEN YOU WERE THERE WITH YOUR PIPEFITTERS AND NEAR THOSE
9 INSULATORS, DID YOU EXPERIENCE DUST THAT WAS BEING CREATED
10 BY THE INSULATORS?
11 A. I CAN'T SAY THAT I REALLY SAW IT, BUT IT WAS
12 THERE.
13 Q. DID YOU SEE OR -- EXCUSE ME. DID YOU EXPERIENCE
14 WHATEVER DUST WAS BEING CREATED BY YOUR OWN PEOPLE? WERE
15 YOU CLOSE ENOUGH TO EXPERIENCE THAT?
16 A. I WAS WITH THEM. SO IF THERE WAS DUST, I WAS
17 WITH THEM.
18 Q. NOW, LET'S GO BACK TO SOME OF THE OTHER JOBS YOU
19 WENT TO.
20 YOU VISITED HOUSING CONSTRUCTION?
21 A. YES, I DID.
22 Q. WOULD THESE BE TRACT, WHOLE TRACT CONSTRUCTION OR
23 INDIVIDUAL HOUSES OR BOTH, OR WHAT?
24 A. INDIVIDUAL HOUSING, FULL TRACTS, APARTMENT
25 HOUSES, SOME SMALL INDUSTRIAL.
26 Q. AND LET'S TAKE HOUSING FIRST.
27 WHAT PERCENTAGE OF THE TYPES OF CITIES THAT YOU
28 VISITED WERE HOUSES?
1788
1 A. ABOUT 90.

2 Q. MOST OF THE WORK?
3 A. MOST OF IT WAS HOUSING.
4 Q. THERE WEREN'T ANY INSULATORS IN HOUSING?
5 A. VERY FEW.
6 Q. ALL RIGHT. WERE YOU THERE WHEN DRYWALL
7 CONSTRUCTION WAS GOING ON?
8 A. YES. YES, I WAS.
9 Q. THERE WAS TAPING WHEN THE DRYWALL WAS GOING ON?
10 A. YES.
11 Q. SANDING THE DRYWALL?
12 A. YES.
13 Q. DID YOU SEE CEMENT MIXED AT THOSE HOUSES?
14 A. YES, I DID.
15 Q. DID YOU SEE ROOFS BEING INSTALLED?
16 A. OH, YES.
17 Q. DID YOU SEE FLOOR TILES?
18 A. YES, I DID.
19 Q. DID YOU SEE FELT PADS UNDERNEATH LINOLEUM BEING
20 CUT OR INSTALLED?
21 A. YES.
22 Q. DID YOU SEE ELECTRICIANS WORKING IN THOSE HOUSES?
23 A. YES, I DID.
24 Q. AND AGAIN, YOU WOULD BE DISCUSSING WHATEVER
25 PROBLEMS YOU HAD IN THE HOUSES OR AT LEAST WHEREVER YOUR
26 PIPEFITTERS WERE WORKING?
27 A. RIGHT.
28 Q. WOULD ALL THESE OTHER TRADES BE WORKING IN CLOSE
1789

1 PROXIMITY TO IT?
2 A. YES, THEY WERE.
3 Q. YOU MENTIONED COMMERCIAL AND THE TRADES?
4 A. YES.
5 Q. THE SAME THING WHEN YOU WENT THERE; YOU WOULD
6 VISIT YOUR UNION MEMBERS WHEREVER THEY WERE DOING THEIR
7 WORK?
8 A. YES, I DID.
9 Q. WOULD THERE BE INSULATORS WORKING IN THOSE TYPES
10 OF JOBS?
11 A. SOME OF THEM, YES.
12 (ATTORNEYS CONFER)
13 MR. BROWN: Q. LET ME SHOW YOU A COUPLE OF --
14 THESE ARE DEMONSTRATIVE EVIDENCE HERE. FIRST I'LL SHOW YOU
15 THE LARGER ONE.
16 THE COURT: IS THERE ANY DESIRE BY ANYBODY TO
17 HAVE IT MARKED?
18 MR. ESCHER: I DON'T HAVE ANY DESIRE TO HAVE IT
19 MARKED. I DON'T KNOW THAT THERE IS ANY BASIS TO SHOW THIS
20 TO HIM.
21 THE COURT: THERE MAY NOT BE. I DON'T KNOW.
22 MR. ESCHER: I'M OBJECTING, YOUR HONOR.
23 THE COURT: TO WHAT?
24 MR. ESCHER: TO HIM SHOWING THE MATERIALS
25 WITHOUT HAVING FOUNDATION AS TO WHAT THEY ARE, WHAT BASIS
26 FOR THEIR BEING RELEVANT TO THIS CASE. I BELIEVE THEY ARE
27 EXHIBITS FROM SOME OTHER CASE.
28 THE COURT: LET ME JUST ASK YOU THIS: UNTIL HE
1790

1 ASKS HIM SOME QUESTIONS, HE SAYS SOMETHING ABOUT IT, I'M NOT
2 GOING TO KNOW WHAT IT IS. YOU WANT TO OBJECT BEFORE HE ASKS
3 THE QUESTIONS?
4 I DON'T KNOW WHAT HE IS GOING TO ASK. MAYBE
5 HE'LL ASK HIM SOMETHING ABOUT IT AND HE WON'T BE ABLE TO SAY
6 ANYTHING ABOUT IT. I DON'T KNOW UNTIL HE ASKS A QUESTION

7 AND GETS AN ANSWER. I CAN'T CUT HIM OFF FROM ASKING A
8 QUESTION.
9 BUT YOU ARE ENTITLED -- THE JURY SHOULDN'T SEE
10 IT. IT SHOULDN'T BE SHOWN TO THE JURY UNLESS AND UNTIL IT
11 GETS INTO EVIDENCE.
12 MR. BROWN: I JUST ASKED IF I COULD DO THAT.
13 THE COURT: JUST DON'T SHOW IT TO THE JURY RIGHT
14 NOW WHILE WE ARE TALKING ABOUT IT.
15 IF YOU WANT TO HAVE IT MARKED FOR IDENTIFICATION,
16 YOU CAN DO THAT WITHOUT SHOWING IT TO THE JURY. AND THEN
17 YOU CAN ASK HIM QUESTIONS ABOUT IT WITHOUT SHOWING IT TO THE
18 JURY, AND WE'LL SEE WHERE WE GO.
19 MR. ESCHER: THAT'S ACCEPTABLE.
20 MS. CHABER: KEEP IT IN THE BOX.
21 THE COURT: KEEP IT IN THE BOX.
22 MR. BROWN: OKAY.
23 THE COURT: HOW MANY OBJECTS ARE THERE?
24 MR. BROWN: TWO.
25 THE COURT: TWO.
26 THE CLERK: PLAINTIFFS' EXHIBITS 1854 AND 1855.
27 (ITEMS MORE PARTICULARLY
28 LISTED IN THE INDEX MARKED
1791
1 FOR IDENTIFICATION PLAINTIFFS'
2 EXHIBITS # 1854 AND 1855)
3 THE COURT: LET ME JUST TELL THE WITNESS, WHEN
4 YOU'RE ASKED QUESTIONS ABOUT IT, DON'T PULL THEM OUT OF THE
5 BOX, BECAUSE THEY ARE NOT IN EVIDENCE YET. WHETHER THEY ARE
6 GOING TO GET INTO EVIDENCE OR NOT I DON'T KNOW.
7 MS. CHABER: I DON'T THINK THEY'RE BEING OFFERED
8 IN EVIDENCE. I THOUGHT MR. BROWN SAID FOR DEMONSTRATIVE
9 PURPOSES.
10 THE COURT: THERE SEEMS TO BE AN OBJECTION ABOUT
11 THAT, PENDING AT LEAST SOME FOUNDATION.
12 MS. CHABER: YOU SAID "IN EVIDENCE."
13 THE COURT: IS THAT CORRECT?
14 MR. ESCHER: WE WERE ONLY HANDED THE THINGS. WE
15 HAVEN'T HAD A CHANCE EVEN TO KNOW WHAT IT WAS, YOUR HONOR.
16 THE COURT: YOUR OBJECTION IS WELL TAKEN. IN
17 TERMS OF IT BEING SHOWN TO THE JURY, IT SHOULDN'T BE SHOWN
18 UNLESS THERE IS SOME BASIS TO SHOW IT.
19 WE DON'T KNOW WHETHER THERE IS OR NOT UNLESS WE
20 HEAR SOME ANSWERS.
21 MR. BROWN: FOR THE RECORD, I ASKED HIM IF THERE
22 WAS ANY OBJECTION. THERE WASN'T ANY. SO I DID IT.
23 MR. ESCHER: ACTUALLY, I DISAGREE WITH THAT.
24 MR. BROWN: YOU HAVE GOT TO OBJECT LOUDER, JOE.
25 Q. THERE ARE THESE TWO OBJECTS. FIRST OF ALL, LET
26 ME SHOW YOU THE SMALLER OBJECT.
27 THE COURT: IS 1854 THE LARGER OR THE SMALLER?
28 MR. BROWN: 1854 IS THE SMALLER.
1792
1 THE COURT: OKAY.
2 MR. BROWN: Q. DOES THAT (INDICATING), BY
3 APPEARANCE ONLY, APPEAR TO BE THE KIND OF DUST OR SCRAPS YOU
4 SAW COMING FROM THE INSULATORS?
5 MR. ESCHER: OBJECTION. LEADING. LACK OF
6 FOUNDATION.
7 THE COURT: HE'S ASKING HIM IF THAT HAS THE SAME
8 APPEARANCE AS WHAT HE SAW. HE'S TALKING ABOUT THE
9 APPEARANCE ONLY.
10 DO YOU WANT TO HAVE A SIDEBAR ABOUT THIS?
11 MR. ESCHER: IT'S NOT THAT IMPORTANT, YOUR

12 HONOR.
13 I WILL WITHDRAW THE OBJECTION.
14 THE COURT: I'M NOT FOLLOWING IT. OKAY. IT'S
15 WITHDRAWN, IN ANY EVENT.
16 MR. BROWN: Q. DOES THIS APPEAR TO BE THE KIND
17 OF DUST MATERIAL THAT YOU SAW BEING CREATED BY THE
18 INSULATION WORKERS?
19 A. YES, IT IS.
20 Q. AND THE OTHER ONE (INDICATING), WHICH IS EXHIBIT
21 1855 FOR IDENTIFICATION, DOES THAT APPEAR TO BE AN EXAMPLE
22 OF THE KIND OF LAGGING OR INSULATION THAT WAS PLACED UPON
23 THE PIPE?
24 A. YES, IT IS.
25 MR. BROWN: OKAY. WITH THE COURT'S PERMISSION,
26 I'D LIKE TO SHOW THEM TO THE JURY.
27 THE COURT: HOLD ON. I'VE GOT TO FIND OUT FIRST
28 IF THERE'S AN OBJECTION.

1793

1 MR. ESCHER: NO OBJECTION.
2 THE COURT: THEN YOU MAY DO THAT.
3 MR. BROWN: ALL RIGHT. THIS WILL BE VERY
4 DRAMATIC. ALL RIGHT.
5 I WILL PASS IT ALONG, IF THAT'S ALL RIGHT, YOUR
6 HONOR.
7 THE COURT: DO YOU HAVE ANY OBJECTION TO IT IF
8 IT'S PASSED?
9 MR. ROSSE: WE HAVE AN OBJECTION TO IT BEING
10 PASSED TO THE JURY, YOUR HONOR.
11 THE COURT: OKAY.
12 MS. CHABER: I THINK, IN FAIRNESS, THOUGH, WE
13 MIGHT WANT --
14 THE COURT: AS I UNDERSTAND IT, THERE IS NO
15 OBJECTION TO IT BEING SHOWN TO THE JURY, BUT THERE IS AN
16 OBJECTION TO IT BEING PASSED TO THE JURY.
17 WITH THAT OBJECTION, IT SHOULDN'T BE PASSED TO
18 JURY. SINCE THERE IS NO OBJECTION TO IT BEING SHOWN TO THE
19 JURY, IT CAN BE SHOWN.
20 THAT'S WHAT I THINK THIS RECORD SHOWS.
21 (PLAINTIFFS' EXHIBIT NOS. 1854 & 1855 SHOWN TO
22 JURY)
23 THE COURT: THE RECORD SHOULD SHOW THAT MR.
24 BROWN SHOWED IT TO THE JURY, BUT IT HASN'T BEEN PASSED.
25 MR. BROWN: Q. NOW, YOU WERE NO LONGER A
26 BUSINESS AGENT AS OF THE YEAR THAT YOUR SON DAVID WAS BORN,
27 1963.

28 DO I HAVE THAT RIGHT?

1794

1 A. I NEED TO SAY SOMETHING TO YOU.
2 Q. YOU WANT TO CORRECT SOMETHING THAT HAS BEEN SAID?
3 A. NO.
4 Q. I DON'T THINK IT'S PROPER FOR YOU TO HAVE A
5 MESSAGE TO ME AT THIS POINT.
6 IS THERE ANYTHING YOU WANT TO CORRECT IN TERMS OF
7 WHAT YOU'VE SAID; IT MIGHT HAVE BEEN INCORRECT?
8 A. NOTHING TO DO WITH THIS.
9 Q. IS IT IMPORTANT THAT YOU HAVE SOME COMMUNICATION?
10 A. IT'S ABOUT -- WE ARE SCHEDULED OUT OF HERE ON A
11 6:00 O'CLOCK FLIGHT, AND I'M LOOKING AT THAT CLOCK, AND I
12 KNOW HOW LONG IT TAKES TO GET FROM HERE TO THE AIRPORT.
13 THE COURT: HOW LONG DOES IT TAKE?
14 THE WITNESS: THEIR DRIVER IS WAITING.
15 THE COURT: DO YOU WANT TO BREAK FOR THE DAY?
16 MR. BROWN: COULD WE MAYBE BREAK AT THIS POINT,

17 YOUR HONOR?
18 MS. CHABER: HE'S COMING BACK ON MONDAY.
19 THE WITNESS: I AM?
20 THE COURT: WHY NOT?
21 FOR THE RECORD, THE DEFENSE HAS INDICATED THERE'S
22 NO OBJECTION, BUT LET ME ASK YOU SO YOU CAN VERBALLY STATE
23 IT: IS THERE ANY OBJECTION?
24 MS. MASON: NO, YOUR HONOR.
25 MR. FURR: NO OBJECTION.
26 MR. HARDY: NO OBJECTION, YOUR HONOR.
27 THE COURT: JURORS, WE ARE GOING TO RECESS FOR
28 THE WEEK.

1795

1 ON MONDAY -- FIRST OF ALL, DON'T DISCUSS THIS
2 CASE WITH ANYONE OR LET ANYONE DISCUSS IT WITH YOU. ALSO,
3 PLEASE DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.
4 ON MONDAY, I'D LIKE TO START AT 9:30. SO HAVE A
5 GOOD WEEKEND. WE'LL SEE YOU ON MONDAY AT 9:30 IN THE
6 MORNING.
7 (THE PROCEEDINGS ADJOURNED AT 4:40 P.M.)
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